

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

-----:  
:  
SONY MUSIC ENTERTAINMENT, et al.,:  
Plaintiffs, :  
:  
-vs- : Case No. 1:18-cv-950  
:  
COX COMMUNICATIONS, INC., et al.,:  
Defendants. :  
:  
-----:

VOLUME 7 (A.M. Portion)

TRIAL TRANSCRIPT

December 10, 2019

Before: Liam O'Grady, USDC Judge

And a Jury

1 APPEARANCES:

2 FOR THE PLAINTIFFS:

MATTHEW J. OPPENHEIM, ESQ.

SCOTT A. ZEBRAK, ESQ.

JEFFREY M. GOULD, ESQ.

MICHAEL J. DRUCKMAN, ESQ.

ANDREW L. GUERRA, ESQ.

LUCY G. NOYOLA, ESQ.

JIA RYU, ESQ.

Oppenheim + Zebrak, LLP

4530 Wisconsin Avenue, N.W.

5th Floor

Washington, D.C. 20015

9 FOR THE DEFENDANTS:

THOMAS M. BUCHANAN, ESQ.

Winston & Strawn LLP

1700 K Street, N.W.

Washington, D.C. 20006-3817

and

SEAN R. ANDERSON, ESQ.

MICHAEL S. ELKIN, ESQ.

THOMAS P. LANE, ESQ.

CESIE C. ALVAREZ, ESQ.

Winston & Strawn LLP

200 Park Avenue

New York, NY 10166-4193

and

JENNIFER A. GOLINVEAUX, ESQ.

THOMAS J. KEARNEY, ESQ.

Winston & Strawn LLP

101 California Street, 35th Floor

San Francisco, CA 94111-5840

and

MICHAEL L. BRODY, ESQ.

Winston & Strawn LLP

35 West Wacker Drive

Chicago, IL 60601

and

DIANA HUGHES LEIDEN, ESQ.

Winston & Strawn LLP

333 South Grand Avenue

Suite 3800

Los Angeles, CA

1431

1

## 2 INDEX

3

<u>WITNESSES</u>	<u>EXAMINATION</u>	<u>PAGE</u>
------------------	--------------------	-------------

4

BRENT BECK (Resumed)		
----------------------	--	--

5

DIRECT	1434
CROSS	1456
REDIRECT	1528
RECROSS	1542

6

MATT CAROTHERS		
----------------	--	--

7

DIRECT	1544
CROSS	1568

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 P R O C E E D I N G S

2 NOTE: The December 10, 2019, morning portion of the  
3 case begins in the absence of the jury as follows:

4 JURY OUT

5 THE COURT: All right, good morning. I see counsel  
6 are all here. Good morning to each of you.

7 Mr. Oppenheim, do you have a preliminary matter, or  
8 you're just anxious to get to the podium?

9 MR. OPPENHEIM: Actually, Your Honor, if the jury is  
09:03:56 10 here, we'll -- we can move forward and hear testimony right  
11 away. We do have an issue we'd like to raise with Your Honor  
12 at a break, when we're not taking up jury time, regarding  
13 Mr. Monson, who has been designated as a deposition witness by  
14 defense counsel, but we can leave it for a break.

15 THE COURT: Okay. Mr. Elkin?

16 MR. ELKIN: Thank you, Your Honor. I just have  
17 very -- two brief issues.

18 THE COURT: Yes.

19 MR. ELKIN: I just wanted to remind the Court two  
09:04:20 20 witnesses today that the plaintiffs are calling, Mr. Beck, who  
21 is currently on the stand, and Mr. Carothers, we're going to go  
22 outside of the cross since we're going to just call them in  
23 support of our case-in-chief as well so we don't have to bring  
24 them back.

25 THE COURT: All right.

1 MR. ELKIN: And the other thing is that we said we  
2 didn't have any objections with regard to the exhibits that  
3 came in with the video played of Mr. Zabek. It was -- I should  
4 have said, and I failed to say it, that it was subject to the  
5 issues that we raised in motions in limine 2 and 3 that the  
6 Court decided against us.

7 THE COURT: Okay.

8 MR. ELKIN: Thank you.

9 THE COURT: All right. Your record is preserved,  
09:04:59 10 then. Thank you. And I'll mention that Mr. Beck and  
11 Mr. Carothers are being called jointly and that they're  
12 witnesses for both parties.

13 MR. ELKIN: Thank you.

14 THE COURT: All right. Joe, let's get our jury,  
15 please.

16 NOTE: At this point, the jury returns to the  
17 courtroom; whereupon the case continues as follows:

18 JURY IN

19 THE COURT: All right, good morning. Please have a  
09:05:47 20 seat. Good morning, ladies and gentlemen. I hope you had a  
21 good evening, and thank you again for coming in on time. Can I  
22 have a nod of heads that you didn't do any research or  
23 investigation or talk to anybody?

24 JURORS NODDING HEADS

25 THE COURT: Thank you very much.

1                   Good morning, Mr. Beck. Please come have a seat and  
2 resume your testimony, sir.

3                   BRENT BECK, PLAINTIFFS' WITNESS, PREVIOUSLY SWORN, RESUMED

4                   THE COURT: Mr. Gould, go ahead.

5                   MR. GOULD: Thank you, Your Honor.

6                   THE COURT: Oh, I'm sorry. Once again, Mr. Beck and  
7 the next -- and another witness today, Mr. Carothers, are being  
8 called jointly by both parties. So they're witnesses on behalf  
9 of Sony as well as Cox, all right? Thank you.

09:06:40 10                   All right. Go ahead, Mr. Gould.

11                   DIRECT EXAMINATION (Cont'd.)

12 BY MR. GOULD:

13 Q. Good morning, Mr. Beck. How are you?

14 A. Good morning.

15 Q. Thanks for returning with us today.

16 A. Certainly.

17 Q. Yesterday when we finished, we were talking about a number  
18 of instances where Cox takes no customer-facing action in  
19 response to receiving notices. Do you recall that?

09:07:00 20 A. I believe so, yes.

21 Q. Now, I want to turn and talk about some of the instances  
22 where Cox does take customer-facing actions in response to  
23 infringement notices. Okay?

24 A. All right.

25 Q. If we could turn to tab 13 in the witness binder? And let

1435

1 me know if you recognize that, sir. This would be PX 351. And  
2 I'm going to direct your attention to interrogatories No. 6 and  
3 8, really just 8 actually.

4 A. Okay.

5 MR. GOULD: I move to admit PX 351, subject to the  
6 same exception we noted yesterday on the interrogatories.

7 THE COURT: All right. Any objection?

8 MS. GOLINVEAUX: Your Honor, subject to the same  
9 exception of yesterday, no objections.

09:08:19 10 THE COURT: That's fine. Thank you. All right.

11 It's received with that --

12 MR. GOULD: Thank you.

13 BY MR. GOULD:

14 Q. So this is another set of interrogatory responses, sworn  
15 written responses verified and signed by Mr. Delgado again,  
16 correct?

17 A. Yes.

18 Q. And if you could turn to interrogatory No. 8 that's on  
19 page 23. Do you see that this asks: State the number of  
09:08:53 20 Customers Or Users whose Internet service You terminated,  
21 temporarily suspended, or otherwise affected, on a per penalty  
22 basis, in response to DMCA notices for 2010 through -- for each  
23 month from 2010 to present, and identify the persons most  
24 knowledgeable about those penalties and the implementation.

25 Do you see that?

1 A. Yes.

2 Q. And do you see that on page 27, towards the bottom,  
3 Mr. Beck, you're listed as the person most knowledgeable about  
4 the CATS database and the penalties, along with Mr. Zabek for  
5 the penalties?

6 A. Yes.

7 Q. And you agree with that?

8 A. Yes.

9 Q. Now, I want to look at page 25. There's a chart, and this  
09:09:47 10 is similar in form -- if you could just zoom in on the headers,  
11 please? -- and this is similar in form to the type of chart we  
12 looked at yesterday, and what it shows here is starting at 2010  
13 and continuing through early, I think, 2015, it shows the  
14 number of instances in which Cox sent its customers warnings,  
15 correct?

16 A. The second column, yes, the warnings.

17 Q. Warnings? Those are the e-mail warnings like we looked at  
18 yesterday?

19 A. That's correct.

09:10:15 20 Q. And the number of instances where Cox suspended customers,  
21 correct?

22 A. Yes.

23 Q. And the number of terminations, correct?

24 A. Yes.

25 MR. GOULD: Okay. If we could pull up the second

1 slide of the demonstrative when you get a chance, Mr. Duval.

2 BY MR. GOULD:

3 Q. So this is a slide, Mr. Beck, showing the date and the  
4 three left columns: Total, Accepted, and Deleted. That's the  
5 same information we looked at yesterday, the black, blue, and  
6 red. Do you recall those numbers?

7 A. I recall a document like this.

8 Q. Okay. So the three left columns show 36 percent of the  
9 notices accepted and 60 -- I'm sorry, 36 percent of the notices  
09:11:09 10 accepted and 63 percent of the notices deleted. And then we  
11 have added here three green columns, and those three green  
12 columns, Mr. Beck, correspond to the information listed in the  
13 interrogatory that we just looked at, and we've limited this  
14 here, sir, to the claim period.

15 Do you see that?

16 A. I see the date range, yes. I see the columns.

17 Q. And you can look through the list and see month by month,  
18 the number of warnings that Cox sent in response to those  
19 5.7 million copyright infringement notices, correct?

09:11:52 20 A. Restate. I'm sorry.

21 Q. You can look down the columns that says Warnings, and see  
22 each month how many notices Cox forwarded as warnings to its  
23 customers and compare that to the total number of notices for  
24 that month, correct?

25 A. You can do that, yes.

1 Q. Right. So, for example, if we take just one month, we  
2 could look at -- let's take January 2014. That's the entry  
3 just below the line.

6                   So if you look at January -- pardon my inartful  
7 circle. If you look at January, it shows that Cox received  
8 about 276,000 notices that month, correct?

9 A. Based on this document, yes.

09:12:49 10 Q. Which is based on the sworn interrogatory from Cox. Do  
11 you recall that?

12 A. Not that -- which one specifically, but --

13 Q. Those numbers on the black, blue, and red columns came  
14 from Cox's sworn statements. Do you recall that?

15 A. I don't recall the specific document, but if that is what  
16 you're representing, then we'll go with that.

17 Q. So of the 276,000 notices received in January 24, let's  
18 look at the first green column. Cox sent its customers  
19 27,000-odd warnings, correct?

09:13:24 20 A. Yes.

21 Q. And then if you total up the number of warnings all from  
22 top to bottom, you see there's a percentage at the bottom? Do  
23 you see that?

24 A. Okay.

25 Q. We did some math here and calculated that as a percentage

1 of the total number of warnings. And according to Cox's sworn  
2 responses, sir, you agree that Cox sent warnings on just  
3 9.38 percent of the, of the copyright infringement notices it  
4 received in the claim period?

5 A. Based on the numbers here, that would be right around the  
6 10 percent range, yeah.

7 Q. And assuming the math is correct.

8 A. Yep.

9 Q. Okay. Let's look at the next column, Suspensions. Same  
09:14:10 10 principle. We can look at the number of suspensions that Cox  
11 issued, again, compared to the number of notices that were  
12 received, correct?

13 A. Correct.

14 Q. So, for example, if we look at, say, on just any given  
15 month, April 2014, Cox received over 373,000 notices, correct?

16 A. Based on the document, yes.

17 Q. And suspended just under 3,000, correct?

18 A. Yes, just under 3,000 suspensions for that month.

19 Q. So we can look at the number of suspensions against the  
09:15:03 20 number of total, right?

21 A. Yes.

22 Q. And then we can do the same -- and if you look at the math  
23 as a percentage, it looks like Cox suspended a little over  
24 1 percent of the customers who received -- excuse me, over  
25 1 percent of the customers in response to -- strike that. I

1 apologize.

2 Cox issued just over 1 percent of suspensions  
3 compared to the total number of notices received in the claim  
4 period, correct?

5 A. Including the blacklisted notices that were not intaken,  
6 yes.

7 Q. Right. Including the notices it deleted?

8 A. Yes, yes.

9 Q. And then if we look at the Terminations column, this is  
09:15:44 10 the number of terminations -- now, sir, I -- this is not  
11 limited to just the subscribers in the RIAA notices, but this  
12 is information that Cox reported about system-wide, across this  
13 entire subscriber base in this period of 2013, February,  
14 through November 2014, Cox terminated a total of 20 customers  
15 according to the sworn statements by Cox, correct?

16 A. Restate that for me, if you would.

17 Q. You see that there are 20 terminations in this period?

18 A. Twenty terms in 2014?

19 THE COURT: It's the far right column, at the bottom.

09:16:30 20 THE WITNESS: Yep, I see the 20.

21 BY MR. GOULD:

22 Q. And we can look at any given month. In February, it was 0  
23 terminations; March, 0 terminations; April, 0 terminations,  
24 correct?

25 A. Uh-huh.

1 Q. At the top, and then there's a 3 and a 1 and a 1. And  
2 throughout this period, there's between 0 and 3 terminations  
3 per month, correct?

4 A. Yes, I see.

5 Q. And then, again, as a function -- or as a percentage of  
6 the total number of notices, copyright infringement notices  
7 received, we did the math here, and it's .0003 percent of  
8 customers terminated in response to copyright infringement  
9 notices, correct?

09:17:08 10 A. Yes, assuming the math.

11 Q. Now, if you add up all of those customer-facing actions,  
12 the warnings, suspensions, and terminations, it's about  
13 10 percent. It's a little over 10 percent, right, 10 and  
14 change?

15 A. Yep. We're getting, yeah, towards 10-1/2, yeah.

16 Q. So what this shows is that in response to the 5.7 million  
17 notices received during the claim period, Cox took a  
18 customer-facing action on just over 10 percent of those  
19 notices, correct?

09:17:33 20 A. Including the ones we considered invalid, yes.

21 Q. Including the ones that you deleted, that's right.

22 A. Yes.

23 Q. Which also means that for 90 percent of the infringement  
24 notices that Cox received during the claim period, it took no  
25 customer-facing action, correct?

1442

1 A. There would have been no customer-facing notifications,  
2 yes.

3 Q. Now, I want to take a look at the ticket history of  
4 several customers to see what it looked like on an individual  
5 basis. Sir, I've handed you what's been marked as PX 547.

6 Do you see that?

7 A. I do, yes.

8 Q. And you understand this is a -- an excerpt from the larger  
9 set of ticket data that you prepared, correct? This is an  
09:18:52 10 excerpt for a single ICOMS ID, No. 436526627504?

11 A. Yep.

12 Q. I'm sorry, did you say yes, sir?

13 A. Okay.

14 MR. GOULD: I'd move to admit PX 547.

15 THE COURT: Any objection?

16 MS. GOLINVEAUX: No objection, Your Honor.

17 THE COURT: It's received.

18 MR. GOULD: If we could publish that?

19 BY MR. GOULD:

09:19:21 20 Q. So what we've pulled up here is a soft copy, an Excel  
21 version of the ticket excerpt that we just produced, and this  
22 is for a residential customer, sir? Does that sound right to  
23 you?

24 A. I would have to look up the account number in the billing  
25 system to find out.

1443

1 Q. Well, I'll represent to you that based on the data, this  
2 is a residential customer. Any reason to doubt that?

3 A. I would have to look it up to be able to know.

4 Q. And you could look, sir, and figure out -- could you  
5 scroll up to the top, please? -- the number of -- can you  
6 freeze the top row?

7 You could look up the number of -- you could figure  
8 out the number of tickets, correct, by counting the individual  
9 ticket IDs?

09:20:05 10 A. Yes. The second column would be the ticket IDs.

11 Q. I realize this is a bit long. We've done the count. You  
12 can scroll through -- if you could just scroll down gently?

13 You see that there are tickets for this customer  
14 beginning in April 2012. Do you see that? Tickets beginning  
15 in April 2012 and tickets lasting until, all the way at the  
16 bottom, December 2014?

17 A. I see.

18 Q. And do you recall the period of data that you provided was  
19 2012 to 2014, correct?

09:20:47 20 A. Yes, that's correct.

21 Q. Again, we don't know what happened with this customer  
22 after 2012 -- after 2014.

23 And you could do the ticket count, but we counted.  
24 Do you agree that there are 67 tickets for this customer?

25 A. I'd have to go through and count them, but yes.

1 Q. You would have to count them?

2 A. Yes.

3 MR. GOULD: Okay. And then let's go up to the top,  
4 Mr. Duval, and run some filters on the Action column, column H.  
5 Column H. And let's filter first for warnings.

6 Q. So this customer out of 67 tickets received, if you can  
7 look at the bottom left, there's a number there -- oh, I want  
8 to back up. My colleague said that I may have said 57 tickets.  
9 This was 67 tickets for this customer.

09:21:42 10 You can see that this customer had 28 warnings,  
11 correct?

12 A. I'm seeing 28 on the screen.

13 Q. And now let's filter on hard limits. Thank you. That was  
14 my fault.

15 It looks like this customer had 23. Again, if you're  
16 looking at the screen, you can look at the bottom left. You  
17 see the number that came up on the filter, 23 hard limits,  
18 correct?

19 A. I see 23 on the screen.

09:22:24 20 Q. And this customer would not have received any  
21 customer-facing action in response to those 23, correct?

22 A. That's correct.

23 Q. Okay. And let's do another filter. Clear that one.

24 On column H, this time for suspension. And you see  
25 that this customer, sir, was suspended nine times in response

1 to some of these 67 tickets?

2 A. Yes. It's over about two years.

3 Q. And the suspensions span from the fall of 2012 into the  
4 winter of 2014, correct?

5 A. Yes, about 26 months.

6 Q. Okay. And then if we filter column H again for  
7 reactivated, please?

8 So remember there were nine suspensions, right?

9 Let's see how many times this customer was reactivated.

09:23:20 10 Nine.

11 Now, the other thing we talked about yesterday is you  
12 can actually see the time differential between suspension and  
13 reactivation, correct? That data exists?

14 A. Yes.

15 Q. We did the math for this customer. Would it surprise you,  
16 sir, to learn that the average time between suspension and  
17 reactivation for these nine suspension-reactivations was about  
18 86 minutes?

19 A. No, that wouldn't surprise me. It's not meant to be a  
09:23:45 20 punishment or a -- it's not meant to keep them offline for a  
21 period of time. It's meant to get their attention and then  
22 bring them educational information.

23 Q. Let's take a look at another ticket. Oh, I'm sorry,  
24 there's one more, if you could pull that one back up. I  
25 apologize. Let's run one more filter and see if we can see how

1 many times this customer was terminated on column H.

2 It doesn't look like termination is an option. Do  
3 you agree that's because this customer was never terminated in  
4 this time period?

5 A. Yeah. If there was a termination logged in CATS during  
6 this time period, it would be in the report.

7 Q. Okay. You can set that aside.

8 Let's take a look at another residential customer.  
9 We'll call this one PX 545. Sir, this is another ticket  
09:25:04 10 excerpt of the kind we just looked at, labeled PX 545.

11 We would move to admit PX 545.

12 THE COURT: Any objection?

13 MS. GOLINVEAUX: Foundation, Your Honor.

14 THE COURT: Is this another customer?

15 MR. GOULD: Same type for ICOMS 131055410901. This  
16 is an excerpt for PX 19, a larger ticket data set.

17 THE COURT: It will be received.

18 BY MR. GOULD:

19 Q. This is a similar-looking excerpt from the larger ticket  
09:25:39 20 data. Do you understand that, sir?

21 A. Yes.

22 Q. And we could run the same kinds of filters analysis,  
23 correct?

24 A. Yes.

25 Q. And this customer is another residential customer who had

1 72 tickets. Do you agree with that?

2 A. I would have to go through and count them.

3 Q. You'd have to count them. Let's run a couple of filters.

4 I think we can get through these a little bit more quickly.

5 Let's look at column H for action. There we go. Let's look

6 for warnings. Let's see how many times this customer with 72

7 tickets was warned.

8 Oh, we don't even need to look on the bottom. We can  
9 just count them. It's seven warnings out of 72 tickets,  
09:26:41 10 correct?

11 A. I see seven on the screen, yes.

12 Q. Okay. Let's look at hard limits. See if we can see how  
13 many hard limits there are. Actually, you know what? This  
14 customer doesn't have any hard limits.

15 Let's move to suspensions. How many suspensions for  
16 this customer with 72 tickets? One suspension, okay?

17 And let's look at how many reactivations. One  
18 suspension, one reactivation, correct?

19 A. That's what I see, yes.

09:27:14 20 Q. And let's see if there's any terminations for this  
21 customer. It looks like that's not an option. No terminations  
22 for this customer, correct?

23 A. None that I see in this document.

24 Q. And this was a residential customer. You understand that?

25 A. I'd have to look that up in the billing system.

1                   MR. GOULD: If you could clear the filter on that? I  
2 want to go back to the top.

3                   Q. So if you look, sir, you'll see that the first through  
4 line 23, there's -- every entry says changed status to closed.

5                   If you could just highlight those first 23 rows.

6                   Do you see that, sir?

7                   A. I see.

8                   Q. And you see in response to those first 23 copyright  
9 infringement tickets in this period, there's not a single  
09:28:02 10 warning to the customer?

11                  A. Are we also representing this to be a residential account?

12                  Q. Yes, sir.

13                  A. Okay. Yes, I see.

14                  Q. So in response to the first 23 copyright infringement  
15 notices to this residential customer starting in 2012, Cox  
16 didn't send a single warning, correct?

17                  A. No. That's uncommon.

18                  Q. Certainly that's what the data you've provided shows,  
19 right?

09:28:28 20           A. For this customer, yes.

21                  Q. And so the first warning this customer got was in May  
22 2012, after 23 -- I guess I counted the header -- after 22  
23 prior notices, right?

24                  A. After 21 prior, discounting the --

25                  Q. I miscounted again. 21?

1 A. Yes.

2 Q. Okay. And then let's scroll -- leave that one highlighted  
3 and just scroll down, if you would. Let's see when the next  
4 warning occurred.

5 There we go. So now we're at line 66, right?

6 A. Um-hum.

7 Q. So we saw that customer's first warned on their 22nd  
8 warning, and now we're up to -- if you count for the header and  
9 the one we're on, it's probably the 64th copyright infringement  
09:29:19 10 notice to this customer, right?

11 A. Yeah. That would probably be the 64th on the list, yes.

12 Q. So this residential customer got 64 copyright infringement  
13 tickets, which we've established is fewer than the number of  
14 notices, potentially, correct?

15 A. Potentially.

16 Q. And got a second warning after 64 tickets, correct?

17 A. That's what I'm seeing here, yes.

18 Q. You can set that one aside. I just want to take a look at  
19 one more.

09:30:05 20 All right. Let's see if I have a third copy -- oh,  
21 here it is. I apologize, we'll do the best we can. I've given  
22 my only spare copy to your counsel. I'll represent to you,  
23 sir, that it's another ticket extract of the same type for a  
24 business customer for ICOMS ID 580070866401.

25 THE COURT: Any objection?

1450

1 MS. GOLINVEAUX: Objection, Your Honor. The witness  
2 doesn't have a copy of the document.

3 THE COURT: Well, he's going to see it on the screen  
4 if we admit it. If we don't admit it, then it's not --

5 MS. GOLINVEAUX: No objection.

6 THE COURT: All right. It's received.

7 MR. GOULD: Thank you. If we could produce --  
8 publish -- do we have, is it 549? I may be short on this one.  
9 I could pull it up on the Elmo.

09:31:15 10 Oh, you have 549?

11 THE WITNESS: You brought me two a moment ago. One  
12 of them was 549.

13 MR. GOULD: If I could be so bold as to ask one of  
14 you to borrow it so I can display it for the jury? Because I  
15 don't think I have this one --

16 THE COURT: Joe, can we get one copy back from  
17 Mr. Beck, please?

18 MR. GOULD: Thank you.

19 So I'm going to go back in time a little and do this  
09:32:01 20 one manually.

21 BY MR. GOULD:

22 Q. Do you see, sir -- and it's a little hard to see, I  
23 apologize, because it's a bit small. Do you see this is  
24 similar in kind to the documents we've just been looking at,  
25 and it's a ticket extract for Cox Business customer with the

1451

1 ICOMS that he's shown in this column?

2 You found it? All right, let's pull it up. We found  
3 it.

4 I got it. Beautiful, thank you. It takes a village.

5 So on this third one, on the business customer, sir,  
6 this was a fraternity based on the information that Cox  
7 provided, so let's see what the fraternity did.

8 A. If we found the -- a copy, do you mind if I get the paper?

9 Q. Oh, yes. Absolutely, sir. And this is PX 549.

09:33:21 10 A. I appreciate it.

11 Q. So similar in kind, we've counted the number of tickets  
12 for this fraternity business customer, and it was 67 tickets,  
13 and you could figure that out by counting the unique number of  
14 ticket IDs, correct?

15 A. That can be determined by counting the ticket IDs, yes.

16 Q. Okay. So let's go to column H and filter again. Let's  
17 filter for warnings.

18 So out of 67 infringement notice tickets, if you look  
19 on the bottom left, sir, you see that it's 48 warnings to the  
09:34:09 20 customer?

21 A. Yes, I see.

22 Q. Okay. And then if we filter for hard limits, that would  
23 be instances where notice or tickets rejected for being over a  
24 complainant's cap, with no customer-facing notice, correct?

25 A. Yes, subject to possibly hold for more. Yes.

1 Q. Nine hard limit replies with no customer-facing action,  
2 correct?

3 A. That's what I see.

4 Q. And -- okay. If you could clear that and go back to  
5 column H, and let's look for suspensions or terminations.

6 We don't see any suspensions or terminations of the  
7 fraternity, right?

8 A. No.

9 Q. And likewise, we don't see any terminations for the  
09:34:57 10 fraternity?

11 A. No, we do not.

12 Q. Okay. And if we could go, unfilter again, and look the  
13 tickets range from March 2012, correct?

14 A. Starting in March 2012.

15 Q. All the way through November 2014, correct?

16 A. Yes.

17 Q. And we don't know what happened after that. We don't know  
18 what happened in 2015 because we don't have the data, right?

19 A. Correct. Yes, this report was scoped 2012, 2013, 2014.

09:35:34 20 Q. And so for any tickets received but they received no  
21 warning and no hard limit reply, do you know what happened to  
22 those? I think the count would be about 19.

23 A. Do we have a way to filter for those?

24 Q. We don't -- I mean, we could filter for -- on H for --  
25 well, changed status to closed would be overinclusive.

1 A. Yeah, that would -- they would all eventually --

2 Q. An entry that's closed with no other action, those are  
3 just closed, right?

4 A. Those are just closed, yes, but given that this is a  
5 business customer, that could have been a phone call.

6 Q. Could have been. It doesn't show here.

7 A. Yeah, phone calls are not a tracked action in CATS, so  
8 those won't show up here. And with business customers, the  
9 level of support they get oftentimes is a phone call.

09:36:27 10 MR. GOULD: Okay. If we could pull up the third  
11 slide from the demonstrative? We're going to just summarize  
12 what happened with the fraternity.

13 Oh, put that down, please.

14 MR. OPPENHEIM: Pull that down, please. Sorry.

15 Apologies, Your Honor. Wrong exhibit.

16 THE COURT: All right.

17 BY MR. GOULD:

18 Q. Here we saw the fraternity had 67 tickets, 48 warnings,  
19 9 hard limit replies, no suspensions, and no terminations.

09:37:17 20 Correct?

21 A. That's correct.

22 Q. With infringement tickets spanning the entire period,  
23 virtually the entire period of the data set?

24 A. Yeah, short a few months. Yes.

25 Q. Now, Mr. Beck, do you understand that Cox has argued that

1 its system is effective because the steps it took were helpful  
2 in getting subscribers to stop infringing?

3 A. Generally, yes.

4 Q. And Cox has argued in this case that the thrust of Cox's  
5 graduated response was to educate and interact with customers  
6 at a fairly intensive level?

7 A. That sounds right.

8 Q. But there was no education or customer interaction for  
9 90 percent of the notices Cox received during the claim period;  
09:38:11 10 isn't that right?

11 A. If we talk about the blacklisted ones, those were  
12 considered invalid notices by Cox.

13 Q. But there's no customer-facing action on those, was there?

14 A. There wouldn't be on an invalid notice, no.

15 Q. And you understand that Cox has argued that the graduated  
16 response was designed to work with customers to determine the  
17 problem, but Cox never worked with customers for -- at all for  
18 90 percent of those; isn't that right?

19 A. Again, if it's an invalid notice, it wouldn't have been  
09:38:40 20 subject to actions or anything.

21 Q. Isn't my question -- isn't the answer to my question yes,  
22 Cox didn't take any customer-facing action in response to  
23 90 percent of the notices it received?

24 A. I'd have to see stats again to say, but --

25 Q. Okay. Let's pull it up one more time, slide 2 in the

1 demonstrative.

2 We talked about this, the 10 percent versus the --  
3 10 percent of customer-facing actions, right? So isn't it true  
4 that while Cox argues that the system was designed to work with  
5 customers and interact with customers, that didn't happen for  
6 90 percent of the notices received?

7 A. That includes the invalid notices.

8 Q. And --

9 MS. GOLINVEAUX: Objection.

09:39:29 10 THE COURT: He's answered the question. I think that  
11 your objection -- he's -- it's been asked and answered several  
12 times, and he's qualifying the answer, and so let's move on.

13 MR. GOULD: Yes.

14 BY MR. GOULD:

15 Q. Those invalid notices, as you described, those contained  
16 all of Cox's requirements for receipt of a valid copyright  
17 infringement notice, correct?

18 A. It depends on how we clarify as all of the requirements.  
19 I think one of the requirements was not to have settlement  
09:39:56 20 demands.

21 Q. So you say that it had a little extra, but it had -- also  
22 contained the matters that Cox required, right?

23 A. I don't know if I'd refer to that as a little extra.

24 Q. Okay. It had a signature, correct?

25 A. It had -- some of them did; some did not.

1 Q. Nothing in Cox's policies said that copyright infringement  
2 notices couldn't make a settlement request; isn't that right?

3 A. The policies, as I understood them from our counsel,  
4 agreed that settlement demands resulted in an invalid notice.

5 Q. So you're focused on why you didn't accept those notices,  
6 but isn't my -- isn't the answer to my question, sir, that  
7 90 percent received no customer-facing action?

8 THE COURT: Yeah, that's the fifth time it's been  
9 asked. Let's -- you know, when I say let's move on, I mean  
09:40:54 10 let's move on, okay?

11 MR. GOULD: Thank you.

12 Thank you, Your Honor. No further questions at this  
13 time.

14 THE COURT: All right. Cross-examination.

15 MS. GOLINVEAUX: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. GOLINVEAUX:

18 Q. Good morning, Mr. Beck.

19 A. Good morning.

09:41:14 20 Q. We've met, but my name is Jennifer Golinveaux, and I'm  
21 going to be asking you some questions on behalf of Cox, okay?

22 A. Certainly.

23 Q. Sir, have you ever testified in court before?

24 A. No.

25 Q. And, Mr. Beck, please remind us, how long have you worked

1 at Cox?

2 A. Since 2001.

3 Q. And did you go to college?

4 A. Yes, I did.

5 Q. Where did you go?

6 A. Gwinnett Technical Institute.

7 Q. And what'd you study there?

8 A. Electronics technology.

9 Q. When did you graduate?

09:41:41 10 A. '93, if I remember correctly.

11 Q. Did you get a degree or a diploma?

12 A. A diploma in electronics technology.

13 Q. Okay. And briefly, sir, what did you do between  
14 graduating and starting with Cox?

15 A. So after graduation, I kind of wanted to combine my  
16 personal love of music with the technical aspects I'd been  
17 studying. So I sought out a job repairing professional audio  
18 equipment, so I deal with any matter of musical gear, recording  
19 gear, keyboards, sound effects, you name it.

09:42:22 20 From there, I kind of evolved into more computer  
21 support roles, worked for a number of companies along the way,  
22 including Soft Sense, which became Radiant Systems. They did a  
23 lot of touch screen point of sale, so they did convenience  
24 stores, movie theaters, restaurants. I was kind of a data  
25 support specialist for them, data recovery specialist. I

1 handled all of the tough cases, the escalation cases for  
2 support, did data recovery for the server crashes and things.

3 After that, I believe I went to The Weather Channel,  
4 so I worked for The Weather Channel in Atlanta, the data center  
5 sitting just above the studio, if I remember correctly. That  
6 was a lot of fun. I worked on some custom Unix equipment that  
7 generates that animated forecast you see every ten minutes on  
8 The Weather Channel, so I was one of the engineers on that,  
9 that was a weather star.

09:43:23 10 I also worked for a company called Weather Plus,  
11 which was a start-up company. Similar business, but they do  
12 content in Europe. Since that was a start-up, it was a small  
13 company, so it was like me and one other guy. We basically did  
14 anything IT, from plugging the mouse into the computer to  
15 dealing with a full, you know, full-scale virus attack on the,  
16 on the company network.

17 I also worked for Sprint, supporting some of their  
18 business internet customers. And I always feel like I'm  
19 missing one somewhere along the line, but I think that brings  
09:43:56 20 us up to 2001, and where I started in with Cox.

21 Q. Mr. Beck, you mentioned a love for music. Are you a  
22 musician?

23 A. I am, yes.

24 Q. Do you play an instrument?

25 A. Mostly guitar, but I will play anything I can get my hands

1 on. I really kind of want a cello, but --

2 Q. Do you play in a band?

3 A. I have a couple times over the years.

4 Q. And, Mr. Beck, from the time you started at Cox in 2001,

5 can you describe briefly the positions you've held at Cox?

6 A. Sure. So when we started, we were bringing all of our  
7 internet services in-house and getting everything, you know,  
8 fired up and self-supported. So there was a lot of discussion  
9 about where to start, and I ended up starting in a role called  
09:44:39 10 a system technician, or a sys-tech, and I started there because  
11 I kind of got to get a little bit into everything, which  
12 satisfied the curiosity element I have.

13 So I started there. We basically monitored all of  
14 our customer internet-related services 24/7, around the clock,  
15 every day, every night. Any issues with that, our in-house  
16 built monitoring system would pick up on it, we would grab it,  
17 troubleshoot it, try to fix it. If we couldn't, we would  
18 escalate to the people or the admins that specifically owned  
19 that particular service, and then I moved up to become one of  
09:45:19 20 those admins. So then I got a, you know, smaller set of  
21 services but a little more power into them for supporting them.

22 I began to take on a little bit more  
23 software-related, coding-related responsibilities, and that  
24 evolved into kind of a system engineer role. And in 2007, I  
25 took over the CATS platform, and I think it was around that

1460

1 time that I shifted over to a software engineer title, the  
2 whole thing just kind of being a slow evolution really, rather  
3 than sort of, you know, stair-step responsibility changes. It  
4 just sort of evolved and grew over time.

5 Q. Sure. And, Mr. Beck, what is your current position at  
6 Cox?

7 A. I think officially at the moment, I am considered a  
8 software engineer 2.

9 Q. Okay. And can you describe generally what you do in your  
09:46:10 10 current role?

11 A. My current role, I handle pretty much all of the technical  
12 aspects for the CATS platform, so everything from support to  
13 architecture and design, software development, engineering.

14 Q. And was that also your role during the 2013 and 2014 time  
15 period?

16 A. Yes, it was.

17 Q. Okay. And, Mr. Beck, we've heard from a number of folks  
18 about CATS, about Cox's CATS system. What is CATS at a high  
19 level?

09:46:45 20 A. So I guess CATS, to start, is the Cox abuse tracking  
21 system, and that's an in-house-built system that was stood up  
22 to, to be able to handle -- pardon me, abuse complaints related  
23 to our customer internet services. So generally speaking,  
24 abuse complaints are sent to abuse@ whatever, you know, the  
25 domain is. And so abuse@cox.net or any other Cox domains we

1461

1 have tend to flow into the front of CATS, and CATS can pick up  
2 those complaints, document them, take actions, so forth.

3 Q. Okay. And, Mr. Beck, putting aside for the moment the  
4 blacklisted complainants that Mr. Gould asked you about, can  
5 you give us a sense of the volume of copyright complaints that  
6 CATS processed during the 2013 and 2014 time period?

7 A. Yes. If I remember correctly, we -- in that time frame,  
8 I think 2013 was probably just over a million; 2014 was about  
9 1.4 million.

09:47:59 10 Q. I'm sorry?

11 A. I believe it was about 1.4 million for 2014, a little over  
12 a million for 2013.

13 Q. All right. And, Mr. Beck, do you know approximately how  
14 many abuse complaints total, including copyright complaints,  
15 CATS processed in the 2013 and 2014 time period?

16 A. Yeah. So including all of the abuse types that we deal  
17 with in CATS, that would have been on average about in excess  
18 of 3 million per year average in that time range.

19 Q. All right. Mr. Beck, have you heard of an entity called  
09:48:37 20 the Recording Industry Association of America, which is also  
21 referred to as the RIAA?

22 A. Yes, I have.

23 Q. And to your knowledge, did Cox receive copyright notices  
24 from the RIAA during the 2013 and 2014 time period?

25 A. Yes, we did.

1 Q. And did Cox keep copies of all the notices it received  
2 from the RIAA during that period?

3 A. Yes.

4 Q. As part of this lawsuit, were you asked to retrieve copies  
5 of those notices that Cox received from the RIAA?

6 A. Yes.

7 Q. How did you retrieve them?

8 A. Performed inquiries into the CATS database, so that's --  
9 you know, we have a database at the, at the heart of the CATS  
09:49:17 10 platform is a database, and that's where all the information is  
11 stored, you know, in a structured fashion.

12 So querying the database is basically, you know,  
13 there's an SQL language. I don't want to get too technical,  
14 but there's a programming like language you can formulate  
15 advanced searches or filters and ways to retrieve out  
16 particular data, so I performed database queries using that  
17 method to find that information.

18 Q. And what is -- you referred to database queries. What is  
19 a -- what is a query? Can you explain that for us, please?

09:49:51 20 A. Sure. It's just a -- it's a special way of formulating  
21 commands to tell the database, you know, which information  
22 you're looking for in this particular case. In this particular  
23 example, pulling the complaints here, I would be able to write  
24 a small snippet of code that basically says, you know, grab all  
25 of the records where, you know, the dates are between this date

1 and that date and where the sender is, you know, whatever at  
2 riaa.com or whatever the particular address was that those  
3 complaints were sent to us from. Since we store that, that  
4 sending address in a particular field in the database, it  
5 allows me to be able to perform queries like that based on that  
6 field.

7 Q. Okay. And does the CATS database contain copies of all  
8 the copyright notices that Cox received from the RIAA during  
9 that period?

09:50:41 10 A. Yes, it does.

11 Q. And does Cox receive those notices in the ordinary course  
12 of business?

13 A. Yes, certainly.

14 Q. Does Cox maintain them in CATS in the ordinary course of  
15 business?

16 A. Absolutely.

17 Q. And, Mr. Beck, do you know approximately how many notices  
18 Cox received from the RIAA during that period?

19 A. Let's see. It was -- the RIAA notices that we received,  
09:51:09 20 that was -- I feel like that was 163, 164,000, if I remember  
21 correctly.

22 MS. GOLINVEAUX: Your Honor, I'd move to, to  
23 introduce DX 347.

24 THE COURT: Any objection?

25 MR. GOULD: What is it?

1 MS. GOLINVEAUX: It's the collection notices he's  
2 just been discussing.

3 MR. GOULD: I think that -- no objection to that. I  
4 think that every notice that the RIAA sent is already in  
5 evidence. There's no objection to another copy of a subset of  
6 those in the time frame Ms. Golinveaux has identified.

7 THE COURT: Okay. It's received without objection.

8 MS. GOLINVEAUX: James, could you display DX 347,  
9 please?

09:52:03 10 MR. GOULD: Is that in the binder?

11 MS. GOLINVEAUX: No, there's a slip sheet. It's an  
12 electronic document.

13 MR. GOULD: Oh.

14 MS. GOLINVEAUX: Got it?

15 MR. GOULD: Yes. Thank you.

16 BY MS. GOLINVEAUX:

17 Q. Mr. Beck, looking at the first page of DX 347, do you  
18 recognize this?

19 A. Yes.

09:52:19 20 MS. GOLINVEAUX: And, James, if you could scroll down  
21 in DX 347?

22 Q. Mr. Beck, is this the collection of approximately 164,000  
23 e-mails that Cox received from the RIAA that you were just  
24 discussing?

25 A. Yes.

1465

1 Q. And scrolling back up to the first document in DX 347, can  
2 you, can you walk us through what this document is, Mr. Beck?

3 A. Certainly. So we are looking at what I refer to as an  
4 abuse complaint. I suppose here we've often basically said  
5 this is a copyright infringement notice, may be a few other  
6 ways to refer to this, but basically this is an e-mail from the  
7 RIAA, yep, and we have the from address here is what CATS would  
8 consider as the complainant.

9 And this e-mail would be received by CATS and  
09:53:41 10 basically describes, you know, an incident of alleged copyright  
11 infringement. It's going to show us the date and time that it  
12 was sent to us, sent to abuse@cox.net. The subject we also  
13 store specifically in the database, and the subject has a  
14 unique ID number there, which is a reference number from the  
15 RIAA.

16 And then we have a signed message body. So the  
17 message body will just describe the general abuse situation  
18 that they're seeing. And if we want to scroll down a little  
19 more, I suppose --

09:54:33 20 MS. GOLINVEAUX: Turn to the next page, please,  
21 James.

22 THE WITNESS: Yep. And here we have some more  
23 information from the complainants generally, and then moving  
24 down, we get to some other interesting stuff here. This is  
25 going to tell us first of all in more human readable form,

1466

1 which our Cox reps would also be potentially looking at if they  
2 were manually reviewing this e-mail, this describes the, the  
3 work in question.

4 So it will describe the title of the work, the artist  
5 of the work in this case, file size. Then we have some other  
6 technical information: IP address, port, and there's a date  
7 and time stamps up above those as well, and those are some of  
8 the key pieces that CATS will be looking for because that's  
9 going to help us to figure out which customer we're talking  
09:55:40 10 about.

11 So if we look below this, you know, more human  
12 readable section, you'll see something that says Start ACNS  
13 XML, and this is, this is for the machines. This is kind of a  
14 structured format to represent the data so that it can be  
15 machine parsed in a reliable way.

16 So ACNS XML refers to a standard, a standard  
17 representation, and it was developed, if I remember correctly,  
18 by all of the involved parties. So basically, a lot of the  
19 major copyright rights holders got together, the studios, the  
09:56:25 20 companies representing them, the ISPs involved, everybody got  
21 together and kind of collaborated on this standard way of  
22 representing the data so that when we do these complaints, we  
23 can have kind of one way for all of us to do it, and that way  
24 we don't have to do something special for each different source  
25 or do something special for each different ISP. So we have one

1 good, clean way.

2 So this is the part that CATS is really going to dig  
3 into to try to extract some good information.

4 BY MS. GOLINVEAUX:

5 Q. I see.

6 And, James, if you could scroll down a little bit  
7 more to see if we're at the end of this first notice from RIAA?

8 Mr. Beck, do you see the last line, where it says End  
9 PGP Signature?

09:57:09 10 A. Yes.

11 Q. Is that the end of this first notice?

12 A. I believe that is the end of the entire notice, yes.

13 Q. Okay.

14 A. That's going to indicate a digital signature that  
15 encompasses the body of this message, which gives us some good  
16 value as well. That allows us to verify the integrity of the  
17 message, that it hasn't been altered in transit, and that it  
18 had been digitally signed by the owner of the key, and when we  
19 validate that signature, it will show which key sent it, and as  
09:57:35 20 long as we have a reasonable trust that that key still belongs  
21 to who it says it belongs to, then we kind of get that good  
22 feeling of, yeah, this was sent from that party, and no one has  
23 altered it or adjusted it in transit, it's not forged, you  
24 know, everything is happy and intact.

25 Q. And, Mr. Beck, why would that be important?

1 A. Well, because a lot of our actions are automated, without  
2 this kind of safety check, it could be dangerous, I suppose, it  
3 could be easy to misuse the system, to really formulate an  
4 attack even on our customers or on us, and we have, in fact,  
5 seen in the past a case where a bad-acting entity, shall we  
6 say, to be polite, was actually forging entry -- forging  
7 copyright notices to us in a sense to make them look like one  
8 of the major common copyright reporting -- complaint reporting  
9 sources.

09:58:42 10 The only thing that saved us there from having a mass  
11 impact on our customers was they weren't able to implement a  
12 digital signature like this, so we did not automate them. We  
13 were able to manually look at them, and when we look at them  
14 with human eyes and we go, that doesn't look like it's supposed  
15 to, these, you know, normally look a certain way, and we  
16 started digging a little further and we realized that, hey,  
17 these are, there are actually fakes. These are forgeries.

18 Q. And what specifically is that? This references a PGP  
19 signature. What's that?

09:59:13 20 A. PGP is a key-pair-based encryption algorithm, and it can  
21 be used for encrypting data or digitally signing data or both.  
22 In our case, we just use it for signatures. There's nothing  
23 supersecret about the information, so there's no need to  
24 actually encrypt it.

25 If I can try to boil it down and not get overly

1469

1 technical, basically they -- the sender has a secret key that  
2 only they have, and they look at the message body when they're  
3 ready to send it. They calculate, like, a little checksum  
4 technically. They run a little bit of math over it, and they  
5 come up with a unique number, and then they take their key and  
6 they sign that unique number, and it kind of creates just a --  
7 just encrypts that little number, and then that goes along in  
8 the signature block.

9 When we get it, we can decrypt it with their public  
10:00:13 10 key showing us the result, and then we can do the same math,  
11 and if it matches, we know it came from them, and we know which  
12 key signed it, so we know who sent it to us and that it hasn't  
13 been altered or fiddled with.

14 Q. It helps prevent the type of incidences you were just  
15 describing if someone is trying to forge a signature?

16 A. Absolutely. At a high level, it tells us who sent it and  
17 that the message is -- the integrity is intact.

18 MS. GOLINVEAUX: Okay. James, could you scroll back  
19 to that last -- go back to the last page of that notice?

10:00:42 20 Q. And is that the end of this first notice, Mr. Beck?

21 A. Yes, it should be.

22 MS. GOLINVEAUX: Okay. James, could you scroll back  
23 up to the first page of the notice?

24 Q. And, Mr. Beck, with reference to this first notice in  
25 DX 347, which is a collection of all the notices Cox received

1470

1 from the RIAA, can you please explain to the jury how CATS  
2 processes a copyright notice like this once it's received, at a  
3 high level?

4 A. Okay. So once we retrieve this notice from the  
5 abuse@cox.net inbox, the first general thing we're going to do  
6 is just sort of parse over the text in here and try to first  
7 determine, you know, what kind of abuse is this, since CATS  
8 will handle, you know, any kind of -- pardon me -- abuse  
9 related to our data customers. So we're just going to take a  
10:01:31 10 quick parse over it and see if we can find a starting point,  
11 what kind of abuse is this.

12 Q. And in this instance, would CATS be able to determine that  
13 this is a copyright complaint?

14 A. Yes, certainly.

15 Q. How would you do that?

16 A. We're really just looking for certain common strings or,  
17 you know, sequence of characters, some words or phrases that  
18 will clue us in to what we're looking at. In this particular  
19 case, we know if it has ACNS XML, that standard is only used  
10:02:02 20 for copyright. So we have a good understanding right away with  
21 this one that it's going to be a copyright complaint.

22 Q. Okay. And, Mr. Beck, can CATS determine from a copyright  
23 notice whether, in fact, any copyright infringement has  
24 occurred?

25 A. No. It can't actually validate the behavior that -- you

1471

1 know, of the complaint. It can't actually tell what's happened  
2 or verify that, no. We're basically just taking the complaint,  
3 you know, at face value, you know, someone is saying this is  
4 happening.

5 Q. And once CATS determines that this is -- this incoming  
6 e-mail is a copyright notice, what does it do next?

7 A. So once we have determined this is a copyright notice,  
8 we're going to continue parsing the body, try to extract some  
9 key information out of there, especially like IP port, time  
10:02:51 10 stamp, run some back inquiries and see if we can take that  
11 information and match it up to a customer account hopefully,  
12 and even if we don't match it up to a customer account, we're  
13 most likely going to move on and create a ticket, and then from  
14 that ticket, we can take customer-facing actions as  
15 appropriate.

16 Those could be automated. They could be done  
17 manually by a Cox representative, either way.

18 Q. Okay.

19 A. But generally, we're going to parse it, get some  
10:03:23 20 information, and create a ticket in the CATS system.

21 Q. Okay. And you mentioned CATS would try to match this  
22 notice up to a customer account. How, how does it do that?

23 A. So to match it up to a customer account, we may perform a  
24 series of queries within Cox. Most of the time, we're looking  
25 for DHCP records, but we're going to take that -- the IP

1 address from the complaint.

2 And since IPs can change over time, they are  
3 technically dynamic, for the most part, they -- almost all of  
4 them are going to typically be dynamic.

5 Then we're going to use that date and time that the  
6 complaint says the event occurred, and we're going to use that  
7 combined with the IP and possibly the port and see if we can  
8 match up, you know, find a record where the IP at that  
9 particular time, you know, which device was that associated

10:04:20 10 with, which customer account is that, in turn, associated with.

11 So that's typically the flow that we're going to follow.

12 Q. And, Mr. Beck, does determining the account also determine  
13 the user that engaged in the alleged behavior?

14 A. No, that's not really possible.

15 Q. Why not?

16 A. That's -- it's not really a technically possible sort of  
17 thing. I mean, we can -- the IP will match up to most likely a  
18 cable modem or something of that nature, and then that modem  
19 is, of course, you know, associated to a particular customer  
10:04:56 20 account. But, you know, within a customer's home, you know,  
21 there could be multiple people. We don't really know who's  
22 actually using the internet at that time. It could be any  
23 number of situations. I mean, typically, it's going to have  
24 multiple people in it.

25 Basically if you see a car speed down the road, you

1 can report the tag, but you don't really know if the owner of  
2 the car was driving or their spouse or their kid or their  
3 neighbor or their guest.

4 Q. Well, and is it possible for someone other than a family  
5 or household member to use an account service?

6 A. Oh, certainly. So, you know, you could have people  
7 visiting, of course. You could have guests in the home. You  
8 could have a neighbor on the WiFi, especially if you, you know,  
9 bought a new router, plugged it in, and didn't realize that the  
10:05:50 10 default password was "password." That happens. So your  
11 neighbors may figure that out and get on there and think that  
12 they get free internet by just riding on top of yours. So  
13 there are certainly cases where that can happen, and that's  
14 just in the residential space.

15 If we get into other use cases, you could see  
16 certainly other people involved with business use cases, that  
17 sort of thing.

18 Q. Well, does Cox have both residential and business  
19 subscribers for its internet service?

20 A. Absolutely. We certainly do.

21 Q. And does CATS receive copyright notices directed to Cox  
22 Business subscribers as well as residential subscribers?

23 A. Certainly. Absolutely.

24 Q. And might a business account also have multiple users?

25 A. Even more so, I would say. Absolutely.

1 Q. Can you give us an example?

2 A. Sure. I mean, even if we just start with a small  
3 business, you know, all of their employees. It could be -- you  
4 know, any of those employees could be using the internet. I  
5 would imagine most of them probably would just in day to day.

6 But, I mean, working up the, up the line with  
7 business, you have all sorts of these cases. So they may offer  
8 guest WiFi services, you know, maybe they have a guest WiFi in  
9 their waiting room and -- or it's a small restaurant or  
10 something, maybe they have WiFi in their cafe.

11 But then you get into larger use cases with  
12 commercial, too. So you could have situations like  
13 universities. You could have situations like military bases.  
14 You could have hospitals. We certainly have a number of  
15 hospitals as customers.

16 So even -- there are even hospitality cases like  
17 convention centers. That's going to be a huge number of users  
18 really. So there are definitely some, some situations like  
19 that.

20 10:07:41 Q. Now, once CATS identifies the subscriber, is Cox able to  
21 contact the subscriber?

22 A. Yeah, typically. A customer account is going to typically  
23 have contact information on it, yeah.

24 Q. And once a ticket is created in CATS, what does CATS do  
25 with the complaint?

1 A. So once a ticket is created in CATS, the complaint is  
2 associated to that ticket. So, you know, if anyone brings up  
3 that ticket in CATS, you'll see the complaint directly beneath  
4 the ticket details. So it's directly associated to the ticket.

5 Q. And does CATS ever associate a copyright notice with an  
6 existing ticket?

7 A. It can, yes, under certain circumstances.

8 Q. And what circumstances?

9 A. So a complaint can be associated to an existing CATS  
10 ticket where we're kind of looking to see if it's in the same  
11 time frame. So if we get a -- probably an example is the  
12 easiest. If we get a complaint and they say, you know, an  
13 incident happened at 9:00 and we create a ticket and we notify  
14 the customer, and, you know, an hour later, we get another  
15 complaint, and it says, you know, same type of abuse, same  
16 customer, in or around 8:58 or 9:15 or maybe, you know, three  
17 hours prior to that or anything along those lines, it'll say  
18 hey, you know, this happened, we may see that there's an  
19 existing ticket right around that same time frame, and we've  
20 notified this customer about this type of behavior. So we're  
21 going to take this complaint and attach it to that ticket as  
22 supplemental evidence. And then if a rep goes in and looks at  
23 the ticket, then they'll see that it has multiple complaints  
24 attached to it, and they'll be able to see each of those.

25 Q. Is that sometimes referred to as "rolling up"?

1476

1 A. Yes, we would refer to that as rolling up or rolling a  
2 complaint into a ticket. Sometimes we say we've correlated the  
3 complaint with the ticket.

4 Q. And why does CATS do that?

5 A. I think that it gives us a little more efficient way to  
6 deal with them, because, I mean, ultimately, we want to educate  
7 the customer on the situation that's happening, on the behavior  
8 that's happening, and if we can roll complaints from, you know,  
9 around the same time together, then if that customer is having  
10:10:18 10 a conversation with a Cox rep and they're looking at the  
11 ticket, it's a lot easier for them to be able to see the  
12 complaints in one place.

13 It also allows us to kind of de-clutter the overall  
14 view of everything so that we can see -- the other customers  
15 that are receiving complaints, that we can see those more  
16 plainly and be sure that we're actioning those more  
17 efficiently, rather than, you know, sending the same customer  
18 multiple warnings, you know, moment after moment.

19 We want to make sure that we get kind of as wide of a  
10:10:49 20 touch as we can.

21 Q. And once the ticket is created in CATS, what happens next?

22 A. So once the ticket is created, then CATS will take a final  
23 peek at it, make sure everything is tidy and in order, and then  
24 it will look to see if this is a situation where we can take  
25 maybe an automated customer-facing action.

1                   And if it's able to do so, then it will proceed with  
2 that and file the ticket; and if it's not, then it can create  
3 the ticket and place it out in open status so that one of the  
4 Cox representatives can take a look at that ticket, and then  
5 they can potentially take the actions manually if they see it  
6 appropriate or add additional documentation, request additional  
7 documentation, whatever it is they need to do.

8 Q.    So what automated, what automated actions can CATS take  
9 with respect to copyright notice in particular?

10:11:54 10 A.    So an automated action we can take could include an e-mail  
11 warning. We would call it, you know, sending a warning, and  
12 that's an e-mail-based notification that we would send toward  
13 the customer.

14 Q.    Mr. Beck, would you turn to tab 2 in your binder?

15                   And, James, you have a copy of our binder for  
16 plaintiffs?

17                   This is not the binder -- the bigger binder that you  
18 were just working through with plaintiffs?

19 A.    No. I believe you took that one. So I have the --

10:12:29 20 Q.    No -- yeah, you've got the right one. You've got the  
21 right one.

22 A.    Yep. We're good.

23 Q.    So, Mr. Beck, as part of this lawsuit, were you asked to  
24 retrieve from CATS copies of the e-mails that Cox sent to its  
25 subscribers, forwarding on the notices from RIAA?

1 A. Yes.

2 Q. Okay. How'd you do that?

3 A. Queries to the CATS database to retrieve that information.

4 So given the time frame in question, which I think was February  
5 2013 to November 2014 generally, since we were able to pull the  
6 notices for the RIAA customers, we were able to associate those  
7 to their corresponding tickets, and then from those -- you  
8 know, from the tickets, we can see the actions that were taken  
9 and copies of any e-mail warnings that were sent.

10:13:18 10 Q. And does the CATS database contain copies of all those  
11 e-mails?

12 A. Certainly, yes.

13 Q. Okay. And does CATS send those e-mails on to its  
14 subscribers in the ordinary course of business?

15 A. Yes.

16 Q. And does it maintain them in CATS in the ordinary course  
17 of business?

18 A. Yes, it does.

19 MS. GOLINVEAUX: Your Honor, I'd move to admit  
10:13:40 20 DX 3695 into evidence.

21 THE COURT: Any objection?

22 MR. GOULD: No objection.

23 THE COURT: It's received.

24 BY MS. GOLINVEAUX:

25 Q. Mr. Beck, once it comes up on your screen, please tell me,

1 do you recognize the document?

2 A. Yes.

3 Q. What is it?

4 A. These documents are copies of the outbound e-mail  
5 warnings, notifications that we sent toward the customers, and  
6 these -- can we scroll down one of these?

7 MS. GOLINVEAUX: James, are you able to bring up a  
8 full? Can you scroll down into the set?

9 THE WITNESS: Yep. Okay. Can we run back up to the  
10:14:51 10 top?

11 BY MS. GOLINVEAUX:

12 Q. Mr. Beck, do you know approximately how many e-mails there  
13 are in this set?

14 A. These are the e-mail warning notifications sent to the  
15 customers. I think that was somewhere in the 79,000 range.

16 Q. Okay. Mr. Beck, if you would turn to tab 2A of your  
17 binder, please? Mr. Beck, we've excerpted the first e-mail in  
18 3695 into a paper copy in your binder marked 3695A.

19 Do you see that?

10:15:42 20 A. I do, yes.

21 MS. GOLINVEAUX: Your Honor, I move 3695A into  
22 evidence.

23 THE COURT: Any objection?

24 MR. GOULD: No objection.

25 THE COURT: It's received.

1 MS. GOLINVEAUX: James, if you could bring up 3695A,  
2 please?

3 BY MS. GOLINVEAUX:

4 Q. Mr. Beck, with reference to 3695A, does this indicate how  
5 the notice in the RIAA was handled?

6 Could you go to the full screen view, James, please?

7 A. Yes. So this customer, this customer was sent the e-mail  
8 warning notification for this particular infringement notice.

9 Q. And is that what we're looking at at the screen on page 1  
10:16:45 10 here? Is that the e-mail notification that was sent to the  
11 customer?

12 A. Yes. That's the copy of the e-mail that the customer  
13 would have been -- received.

14 Q. Okay. And are there other kinds of customer-facing  
15 actions that CATS takes with respect to copyright tickets?

16 A. Certainly.

17 Q. What are they?

18 A. CATS can do an action which we refer to as "suspend."  
19 Sometimes we'll say "quarantine," same thing.

10:17:08 20 Q. Okay.

21 A. And that's placing them into what we call an abuse walled  
22 garden environment. It's another method for notifying and  
23 educating the customer.

24 Q. And in connection with copyright notices specifically, are  
25 there different types of walled gardens?

1 A. So we will sometimes use the term "soft-walled garden" and  
2 "hard-walled garden." Technically speaking, the underlying  
3 process is very similar, but when we call them soft and hard,  
4 it refers to a certain distinction in the way that the  
5 experience goes.

6 Q. And, Mr. Beck, does CATS ever send communications to  
7 complainants who have sent in copyright notices?

8 A. Pardon me. Yes.

9 Q. What types of e-mails might CATS send to complainants?

10:18:01 10 A. So when we send back to complainants, and assuming they  
11 have a, you know, functional address that they've sent to us  
12 from and it's not, you know, noreply@example.com, the most  
13 basic could be an auto reply. So we may send them a short, you  
14 know, a short form that just says, thank you, we've received  
15 your notice, you know, we'll look into it, so forth, so on.

16 We may also send replies back to the customer if  
17 there is anything we see may be missing, invalid, or not well  
18 formed in the complaints.

19 Q. Okay. And so, Mr. Beck, we still have up on the screen an  
20 example of the letter that would be generated out of CATS to  
21 the customer with a copyright notice, right?

22 A. Yes.

23 Q. Do Cox subscribers ever respond when CATS forwards them a  
24 copyright notice?

25 A. Certainly.

1 Q. What happens when customers respond to copyright notices?

2 A. So when we send them the notification, we send it -- we  
3 send that e-mail from abuse@cox.net. So when they respond --  
4 and granted, sometimes they'll pick up a phone and call us, but  
5 if they want to respond to the e-mail, if they just click  
6 Reply, it's going to come back to abuse@cox.net.

7 So that's going to go right in the front door of CATS  
8 again, as everything to abuse@cox.net does, but when CATS picks  
9 up that new reply from the customer, picks up that e-mail and  
10:19:39 10 starts parsing it, it's going to see certain characteristics  
11 which we can see in the subject here.

12 There's kind of a section in brackets that has a date  
13 and a number. That number is actually the CATS ticket number.  
14 So when we see that pattern at the beginning of a subject, we  
15 realize within CATS that this is a customer reply.

16 So CATS will look up that original ticket number,  
17 consider that the parent ticket, and to make a long story  
18 short, we'll create a new ticket, and we'll call it a child  
19 ticket, and we'll associate it to that original parent ticket  
20 that's mentioned in the subject, and that child ticket is left  
21 in an open status so that one of the Cox representatives can  
22 take a look at that and respond accordingly, and when they take  
23 a look at that ticket, they'll have a little link in CATS that  
24 says this ticket is a child of ticket number blah, and they can  
25 click on that right away, go right up to the parent ticket, see

1 the original story, come back to the child ticket, respond  
2 accordingly, whatever they need to do.

3 Q. Okay. Well, let me ask you, does CATS ever automatically  
4 respond to these child tickets?

5 A. No. It's always going to form the open ticket and let  
6 that be manually reviewed by a person.

7 Q. Okay. And was it the duty of the customer safety team to  
8 review these child tickets in the ordinary course of business?

9 A. Yes, it would be.

10:21:03 10 Q. And were they maintained in CATS, these child tickets, in  
11 the ordinary course of business?

12 A. Certainly. We do that for any of the abuse types.

13 Q. During the period from February 2013 to November 2014,  
14 which is the claims period in this case, do you know whether  
15 any subscribers sent e-mails in response to Cox forwarding  
16 notices from the RIAA?

17 A. Yes.

18 Q. And did Cox receive those e-mails in the ordinary course  
19 of business?

10:21:26 20 A. Yes, certainly.

21 Q. And did Cox maintain copies of them in the ordinary  
22 course?

23 A. Yes.

24 Q. And in connection with this lawsuit, sir, were you asked  
25 to retrieve copies of the e-mails that Cox received from its

1 subscribers during this time period concerning forwarded RIAA  
2 notices?

3 A. Yes.

4 Q. Approximately how many e-mails did you retrieve?

5 A. If I remember correctly, I believe there were about 1,700.

6 Q. And would you turn to tab 3 in your binder, please?

7 Your Honor, I move to introduce DX 496 through 2200,  
8 which is the set that Mr. Beck was just describing.

9 THE COURT: Any objection?

10:22:08 10 MR. GOULD: Yes, sir. May we approach?

11 THE COURT: Yes, sir.

12 NOTE: A sidebar discussion is had between the Court  
13 and counsel out of the hearing of the jury as follows:

14 AT SIDEBAR

15 THE COURT: Yes, sir.

16 MR. GOULD: This is the voluminous set of documents  
17 related to Mr. Vredenburg's testimony. Mr. Vredenburg looked  
18 at three or four of them. Ms. Golinveaux is now trying to move  
19 in 1,700.

10:22:39 20 They're hearsay. We don't believe they're business  
21 records just because they were kept in CATS. They're e-mails  
22 from customers. The content is hearsay. Your Honor has  
23 already ruled on that. The fact that they were stored doesn't  
24 make them a business record, per se.

25 In addition, we think that the use of them in that

1 volume is for an improper purpose, and it's not to show that  
2 they existed or that they gave notice, but to present the jury  
3 with a large stack of paper that they will implicate are  
4 similar to the few we saw from senior citizens and folks who  
5 disclaim knowledge or intent in this material.

6           Lastly, in looking at the database of documents  
7 produced by Cox in this case, my understanding, and if I'm  
8 misspeaking, certainly let me know, I believe that the 1,700 is  
9 a subset of the customer e-mails. I thought that the March 15,  
10:23:32 10 2019, production, which included this volume, included many,  
11 many, many, many more and that the 1,700 are a set that they  
12 selected.

13           If I've misspoken, then please correct me. That was  
14 my understanding.

15           THE COURT: Go ahead.

16           MS. GOLINVEAUX: Your Honor, it's not a subset.  
17 We're introducing all the e-mails that we got back in response.  
18 We didn't offer them in paper, so this is not a ploy to show a  
19 stack of paper. We provided them in court on an electronic  
10:23:59 20 copy.

21           And Your Honor ruled that if Cox could establish that  
22 these communications back from the subscribers in response to  
23 RIAA notices was relevant to Cox's state of mind during the  
24 time period, as opposed to retroactively we're just pulling  
25 them up to say, well, they did come in, then they could be

1 admissible by Cox for that purpose, and that's the purpose  
2 we're, we're offering them, Your Honor.

3 We've established that they all came in, they had to  
4 be manually reviewed. The abuse team did that. Mr. Vredenburg  
5 testified to that as well, and we think they're properly  
6 admissible for that purpose.

7 THE COURT: As business records or as information  
8 that Cox received in administering the CATS program?

9 MS. GOLINVEAUX: Well, Your Honor, we --

10:24:42 10 respectfully, we believe they're admissible as both. We think  
11 we've laid a solid foundation that they are business records,  
12 but we also think they are admissible as to state of mind  
13 during the period.

14 MR. GOULD: They've already established the types of  
15 e-mails, how Cox received and handled them, and Mr. Beck has  
16 already testified that there are 1,700. There's no added  
17 benefit to admitting in the record 1,700 documents.

18 THE COURT: Okay. Your exception is noted. I'm  
19 going to admit them. I'm going to go with my prior rulings. I  
20 think they are information that Cox received back in the  
21 CATS program, and customers were -- some of them were pushing  
22 back.

23 We're not going to go through these documents, but  
24 the testimony is already there that they've testified the  
25 contents of the documents are hearsay. I have no idea of the

1 reliability. You demonstrated on a number of them that there's  
2 no reliability to the information that was received back from  
3 Cox, but notwithstanding, that's why I don't think they should  
4 come in as records that the truth of their content is  
5 established, but I think the notice and the state of mind, I'm  
6 going to allow it for that purpose.

7 MR. GOULD: Thank you, Your Honor. Two  
8 clarifications: One, I would ask that you provide the same  
9 instruction again; and secondly, I've reviewed many of those  
10:26:09 10 documents. I've seen a fair bit of either duplication or  
11 instances where Cox actually responds to someone.

12 Is the 1,700 just e-mails from customers, or does it  
13 also include Cox's responses to customers? Because on that  
14 point, the number --

15 THE COURT: Well, let her answer that question first  
16 before you go on your next.

17 MS. GOLINVEAUX: It's a set of just the ones that  
18 came in to Cox, Your Honor.

19 THE COURT: So there may be duplications. There's  
10:26:40 20 no guarantee.

21 MR. GOULD: On that representation, we stand on our  
22 objection.

23 THE COURT: Okay. All right. Thank you, counsel.

24 MS. GOLINVEAUX: Thank you.

25 THE COURT: How much more do you have on this

1 witness?

2 MS. GOLINVEAUX: Your Honor, I think maybe 20  
3 minutes, 25 minutes.

4 THE COURT: Okay. We'll see whether we can finish  
5 that up before we go to the next.

6 MS. GOLINVEAUX: Okay.

7 THE COURT: What -- you've got Cadenhead next?

8 MR. OPPENHEIM: Carothers.

9 THE COURT: Carothers next. Okay.

10:27:07 10 Now, duplication, if I start hearing the same stuff  
11 that's come from Zabek and Beck, you're toast. Okay? Just --

12 MR. OPPENHEIM: Our Carothers examination will be, I  
13 believe, reasonably surgical.

14 THE COURT: Okay.

15 NOTE: The sidebar discussion is concluded; whereupon  
16 the case continues before the jury as follows:

17 BEFORE THE JURY

18 THE COURT: All right. The exhibit is accepted.

19 These are the subscribers responding back to Cox after they got  
10:27:51 20 notices, and as I said, I believe, yesterday, they're admitted  
21 for purposes of demonstrating that Cox was receiving customer  
22 information back and -- but not for the truth of the, of the  
23 statements that the customers made back to Cox, just the fact  
24 that they received them. Okay?

25 All right. Please, continue.

1 MS. GOLINVEAUX: Could you display DX 496 to 2200,  
2 James?

3 BY MS. GOLINVEAUX:

4 Q. And, Mr. Beck, I'm just going to ask, do you recognize  
5 this set as the documents you just described for us with the  
6 communications coming back from customers' response to RIAA  
7 notices?

8 A. Yes.

9 MS. GOLINVEAUX: James, you can take it down.

10:28:50 10 Q. Mr. Beck, would you please turn to tab 4 in your binder?  
11 It's an exhibit that's been marked as DX 140, and just tell me,  
12 do you recognize this document?

13 A. Yes.

14 MS. GOLINVEAUX: Okay. Your Honor, I'd move to  
15 introduce DX 140.

16 THE COURT: Any objection?

17 MR. GOULD: Yes, Your Honor. With my apologies, may  
18 we approach?

19 THE COURT: Okay.

20 NOTE: A sidebar discussion is had between the Court  
21 and counsel out of the hearing of the jury as follows:

22 AT SIDEBAR

23 THE COURT: Yes, sir.

24 MR. OPPENHEIM: Your Honor -- I'm sorry.

25 THE COURT: Go ahead.

1                   MR. OPPENHEIM: So I understand the defendants want  
2 to admit DX 140. The Court has already ruled on this issue.  
3 This is part of the 96 percent study that the Court in its  
4 motion in limine has already excluded. We've had argument on  
5 it.

6                   This particular document, in addition to having all  
7 the problems inherent in the motion in limine, is classic  
8 hearsay, so it shouldn't come in for that reason. Moreover,  
9 this document purports to, to communicate data. That data was  
10:30:33 10 never provided to the plaintiffs, we asked for it repeatedly,  
11 and so we've never had an opportunity to review it.

12                  They now, I suspect, want to have Mr. Beck testify as  
13 to the very things that this Court has excluded by looking just  
14 at this data, but the real data was never provided.

15                  So it's another way of just trying to get around this  
16 Court's prior rulings.

17                  MS. GOLINVEAUX: Your Honor, I disagree that it was  
18 covered in the Court's prior rulings. I believe the Court's  
19 rulings on the motion in limine were directed specifically to  
10:31:08 20 Mr. Cadenhead's PowerPoint in the e-mail forwarding that  
21 PowerPoint.

22                  This is Mr. Beck's e-mail where he forwards the data  
23 that he pulled to Mr. Cadenhead. He testified during his  
24 deposition that that is the data. There wasn't additional data  
25 to provide to plaintiffs.

1                   And the Court indicated at the pretrial conference  
2 that this could be relevant to Cox's state of mind if we  
3 established foundation that it was contemporaneously reviewed  
4 by folks at Cox, and Mr. Beck is about to testify exactly how  
5 he queried the system for that data and who he shared it with  
6 and discussed it with.

7                   MR. OPPENHEIM: Your Honor, may I respond?

8                   THE COURT: Yeah.

9                   MR. OPPENHEIM: What Ms. Golinveaux just said is  
10:31:51 10 inaccurate in at least one very clear respect. This document  
11 was not produced until virtually the last week of discovery.  
12 No witness testified about this or was given an opportunity to  
13 testify. We asked repeatedly for the data underlying the 96  
14 percent study, and it was only literally the last week of  
15 discovery that they sent us this.

16                   THE COURT: So, I'm sorry, did Beck -- was Beck  
17 deposed and did he --

18                   MR. OPPENHEIM: Well before this was produced.

19                   MS. GOLINVEAUX: He -- sorry, Your Honor.

10:32:20 20                   THE COURT: That's all right.

21                   MS. GOLINVEAUX: He did testify about the e-mail  
22 during his deposition, and we produced it promptly thereafter  
23 because of the testimony.

24                   THE COURT: All right. I'm not going to admit 140 on  
25 two separate bases. One, it was produced late, after his

1 deposition. He wasn't asked specifically about it.

2 And second, the underlying documentation wasn't  
3 produced, and the queries that he's doing are not clear from  
4 the exhibit itself, but clearly the plaintiff should have had  
5 an opportunity to depose him on this exhibit and have an  
6 opportunity to look at the underlying data, and that was not  
7 produced. So your exception is noted. I'm not going to admit  
8 140.

9 MR. GOULD: Thank you, Your Honor.

10 NOTE: The sidebar discussion is concluded; whereupon  
11 the case continues before the jury as follows:

12 BEFORE THE JURY

13 THE COURT: Please, proceed.

14 MS. GOLINVEAUX: Thank you, Your Honor.

15 BY MS. GOLINVEAUX:

16 Q. Mr. Beck, plaintiffs' counsel asked you at some length  
17 about blacklisting copyright complainants. Do you remember  
18 that?

19 A. Yes.

10:33:48 20 Q. Sir, what does that term mean with respect to CATS?

21 A. So with respect to CATS, blacklisting would be something  
22 we would apply based on the sender, and that would be -- that  
23 would be in cases where there is, you know, a persistent issue  
24 with the complaints from that sender. Typically, a blacklisted  
25 sender, we would delete those notices as they come in. In some

1 rare cases, we may ticket them and close the tickets as well.

2 There are some circumstances for that.

3 Q. And do you have an understanding of why in general Cox  
4 might blacklist a sender?

5 A. There can be a number of reasons. There can be a number  
6 of reasons. Generally, as I said, it means there's a  
7 persistent issue with the complaints from that sender. So --

8 Q. Pardon me, Mr. Beck. Please continue.

9 A. No worries. We do have cases where we'll have entities  
10:35:03 10 sending us complaints that are abusive or hostile or just  
11 generally -- yeah, just -- I don't even know how to describe  
12 that. But we do have cases where we're getting, you know,  
13 non-useful complaints, hostile language, that sort of thing.

14 But for this case, since we're talking about  
15 copyright-related complaints, blacklisting would -- I believe  
16 the only reason we did any blacklisting -- well, two reasons we  
17 did blacklisting. One was complaints that contained settlement  
18 demands, and the other goes back to the incident I mentioned  
19 about forged complaints. Obviously, we don't want to action a  
10:35:55 20 fake complaint.

21 So those are the two primary reasons that would come  
22 up as -- regarding copyright-related complaints.

23 Q. Okay. Mr. Beck, to your knowledge, does Cox inform  
24 complainants before putting them on a blacklist?

25 A. Yes. Typically, yes. We would want to give them an

1 opportunity to address any issues that we're seeing.

2 MS. GOLINVEAUX: Okay. With the Court's permission,  
3 I'd like to hand up to the witness what's been marked as  
4 PX 349. It's not yet in evidence.

5 THE COURT: All right.

6 MS. GOLINVEAUX: It should be tab 12.

7 THE WITNESS: Thank you.

8 THE COURT: Do you know whether he can identify it?

9 BY MS. GOLINVEAUX:

10:36:50 10 Q. Mr. Beck, can you -- do you identify this -- can you  
11 identify this document?

12 A. Yes.

13 Q. What is it?

14 A. This is a page from what we call the CATS wiki, which is  
15 an internal documentation site.

16 Q. What is a wiki, sir?

17 A. I guess the easiest starting point, a lot of people are  
18 familiar with Wikipedia online. A wiki, in general, is a type  
19 of website where users, some or sometimes all, can edit the  
10:37:30 20 content of the pages. So it's often used to -- for  
21 documentation, Wikipedia being the most well known wiki, I  
22 think.

23 So you can have a page documenting something, and  
24 people with appropriate permissions can edit the page and make  
25 adjustments on the fly. So basically it's a living document,

1 modifiable easily.

2 Q. And, Mr. Beck, with reference to PX 349, did you create  
3 that document?

4 A. Yes.

5 Q. And is this page from the wiki that lists out the senders  
6 Cox had blacklisted?

7 A. Yes. Yes, they would be on here. Yes.

8 MS. GOLINVEAUX: Your Honor, I move to admit PX 349  
9 into evidence.

10:38:14 10 THE COURT: Any objection?

11 MR. GOULD: No objection.

12 THE COURT: It's received.

13 BY MS. GOLINVEAUX:

14 Q. So, Mr. Beck, can you explain to us what this particular  
15 CATS wiki page covers, just as a high level, not going through  
16 each section?

17 A. Sure. This was a page I put up so that we could  
18 internally document issues with specific complainants. So  
19 these are senders, complainants, people -- or e-mail addresses  
10:38:53 20 that are sending to abuse@cox.net or any of our other abuse  
21 addresses, and this attempts to just sort of describe what the  
22 problem was with each of them that we were encountering and  
23 whether or not we had any mitigating actions in place with  
24 respect to that.

25 Q. And is this page specific to issues with copyright

1 complainants?

2 A. No. This is issues with any complainants sending to CATS.

3 Q. What other types of complaints might be addressed on this  
4 wiki page?

5 A. So we have had cases where people will just sort of send  
6 us angry streams of expletives. It's obviously not a useful  
7 abuse complaint. And in some of these cases, replying only  
8 resulted in more angry expletives coming back towards us. So  
9 there were some -- there were some abusive cases like that

10:39:45 10 where we've done stuff.

11 We've also had cases where senders will repeatedly  
12 send us notices, for example, sending us spam that they've  
13 received, which just as a high level, we would normally be able  
14 to take an action if one of our customers was sending spam out,  
15 and then we could reach out to them and say, hey, that's not  
16 cool with our terms, but when they're receiving junk mail,  
17 there's not a lot we can do other than kind of offer some help  
18 about, you know, how to help filter spam and that sort of  
19 thing.

10:40:21 20 But we have a special e-mail address at Cox for  
21 recording inbound spam, and that goes into our e-mail platform  
22 and helps them dynamically adjust their spam filters and that  
23 sort of thing, and that's outside of CATS. But we've had  
24 complainants before where they continue to automatically  
25 forward all their junk mail to us, and we continue to tell

1 them, you know, if you don't mind, please send that to our spam  
2 report address. It would be very helpful.

3                   But they continue to send it to abuse. So instead of  
4 having our reps waste time closing these tickets every day,  
5 then we just mark them so that we create a ticket and close it,  
6 you know, we've advised the customer where they -- where this  
7 would be best sent to, and we want to make sure our agents have  
8 time to focus on the more pressing issues.

9                   MS. GOLINVEAUX: Okay. And, James, if you could  
10 scroll down to page 2 of this wiki page?

11 BY MS. GOLINVEAUX:

12 Q. And, Mr. Beck, there's a section -- let me direct your  
13 attention to an entry on page 2. There's a sender identified  
14 as DMCA@DigitalRightsCorp.com. Do you see that? It's about --  
15 it's just a little more than halfway down the page. Okay.

16                   And, James, before we talk about Digital Rightscorp  
17 specifically, if you could blow up that second half of the page  
18 for us?

19                   And, Mr. Beck, does this portion of the wiki list out  
20 the complainants that Cox had blacklisted with respect to  
21 copyright notices?

22 A. There are several on here that were copyright related,  
23 yes.

24 Q. Okay. And with respect to -- and does it all -- strike  
25 that.

1                   Does it also list the reasons for Cox blacklisting  
2 this -- the particular complainant?

3 A. It should, yes. I can take a look here, but yeah,  
4 generally we wanted to list each address and then, you know,  
5 what our, what our reasons and/or mitigating actions were, so  
6 yes.

7 Q. Okay. Well, let's look at that with respect to the  
8 Digital Rightscorp's entry.

9                   If you could blow that up, please, James, on the  
10:42:38 10 whole entry, not just the -- okay. Thank you.

11                  Mr. Beck, can you read the reasoning here on this  
12 listed for Digital Rightscorp being on the blacklist?

13 A. Certainly. The sender was DMCA@DigitalRightsCorp.com.  
14 The note I put in here: This complainant sends DMCA complaints  
15 demanding a monetary settlement to avoid further legal action  
16 (not unlike a blackmail threat). Complaints are now  
17 auto-deleted.

18 Q. And, Mr. Beck, do you have an understanding of why Cox  
19 blacklisted notices from Digital Rightscorp?

10:43:20 20 A. Yes. Yes, I do.

21 Q. Why is that?

22 A. So starting with the description here, they had settlement  
23 demands in the language. It felt threatening, to be honest.  
24 Not casually threatening. It felt imposing.

25                  But our legal and privacy counsel advised us that

1 these notices could be blacklisted, that they would not be  
2 considered in spirit of the DMCA.

3 Q. Well, Mr. Beck, do you know if Cox had a policy to  
4 blacklist notices that demanded payments by Cox's subscribers?

5 A. Yes. Anytime we've seen these settlement demands, that's  
6 been a blacklist situation for us.

7 Q. And if a sender was blacklisted, what did Cox do with  
8 their notices?

9 A. Typically, those notices would be deleted as they arrive.

10:44:34 10 Q. And if a complainant agreed to remove the settlement  
11 demand language from their notices, would Cox reconsider the  
12 blacklisting?

13 A. Certainly. We'd much rather have the notices tidied up  
14 and be able to deal with them than to have to, you know, have  
15 them on a special list and that kind of thing.

16 Q. Are there examples of when that occurred?

17 A. Yeah, that's definitely occurred.

18 Q. Okay. With reference to page 2 of this document, do you  
19 see an example of that occurring?

20:45:00 20 A. Yes, certainly. We're going to -- we're going to be  
21 talking about the bottom of page 2 here. There's an entry for  
22 an entity that is named CEG TEK, C-E-G T-E-K.

23 That's the one. Yep.

24 Q. And what happened with CEG TEK? Were they initially on  
25 the blacklist?

1500

1 A. Yep. They were, they were sending settlement demand  
2 language. They were sending complaints with settlement demands  
3 in them. They were threatening and, yeah, those are my words.  
4 It felt kind of blackmailish. It was basically give me a stack  
5 of money or I'm dragging you, you know, into court, and we're  
6 going to -- we're going to sue you for a ton. That's basically  
7 the feeling that they came across with.

8 But yes, we were blacklisted them --

9 MR. GOULD: Objection, Your Honor. Move to strike.

10:45:56 10 He's got -- Mr. Beck has no foundation for this -- for these  
11 statements.

12 THE COURT: Yeah, I'm going to strike the last  
13 answer.

14 BY MS. GOLINVEAUX:

15 Q. All right. Mr. Beck, let me ask you this: Did at some  
16 point CEG TEK come off the blacklist?

17 A. Yes. Yes, they did.

18 Q. Why is that?

19 A. CEG TEK did reach out to us to inquire, you know, hey,  
10:46:17 20 we'd like to work with you. What can we do to get our notices,  
21 you know, proper and get them processed?

22 So there was modifications made on the CEG TEK  
23 notices. Cox took a look at those, the settlement demands were  
24 removed from the notices, and CEG TEK was removed from the  
25 blacklist, and they were processed normally thereafter.

1501

1 Q. Now, plaintiffs' attorney asked if you're aware that Cox  
2 had at some point blocked notices from Rightscorp at the mail  
3 server. Do you remember that?

4 A. Yes.

5 Q. And I believe you explained to us that blocking at the  
6 mail server was different than blacklisting. Is that right?

7 A. That's correct.

8 Q. Can you remind us, what is the difference between blocking  
9 at the mail server versus blacklist?

10:47:06 10 A. Okay. So when they're blacklisted with CATS, the e-mails  
11 are sent to abuse@cox.net. They arrive in our inbox, and as  
12 CATS goes through the inbox, it will see the sender of each  
13 message, and if that sender is on the blacklist, then that  
14 message is typically deleted, and we move on to the next  
15 message.

16 Q. Okay.

17 A. When complaints are rejected at the mail server level, at  
18 that point -- I won't make this too technical or dry -- the  
19 complainant will send the complaint. It goes to the  
10:47:48 20 complainant's mail server. They send it to the Cox mail  
21 server. So those two servers are talking. It says, I have an  
22 e-mail for you, and Cox says, I'm not going to accept that  
23 e-mail from you. I'm rejecting that.

24 So the mail server on the complainant side would then  
25 see that the message was rejected, and it would either queue or

1 move on. So those messages do not come into the Cox e-mail  
2 platform at all.

3 Q. And I believe you testified that at one point, Rightscorp  
4 was on the blacklist, and then they were blocked at the mail  
5 server level; is that correct?

6 A. That's correct. They were initially blacklisted in CATS  
7 and then moved on to being rejected at the mail server platform  
8 out of necessity.

9 Q. Do you know why Cox blocked Rightscorp's notices?

10:48:38 10 A. Yes.

11 Q. Why?

12 A. The initial blocking of the Rightscorp notices was due to  
13 the presence of settlement demands.

14 Q. And what happened after they were blacklisted to have Cox  
15 move to the -- to blocking them?

16 A. So after they were blacklisted, the -- sometime shortly  
17 thereafter, the volume of complaints that we received from  
18 Rightscorp shot up dramatically, and it went up to a high  
19 enough volume that we were no longer able to take in any new  
10:49:21 20 abuse complaints from any senders for any type of abuse at all.

21 Even with the blacklist in place, there would -- they were  
22 sending us just way too many for us to be able to maintain  
23 functionality on the CATS platform.

24 Rejecting them upstream at the mail server platform  
25 before they come down to the CATS level was the only feasible

1 technical way that we had to resolve that issue and get CATS  
2 functional again.

3 Q. Now, Mr. Beck, to be clear, did Cox ever blacklist notices  
4 sent from the RIAA?

5 A. No, no.

6 Q. Did Cox ever block notices sent from the RIAA?

7 A. No.

8 Q. How do you know?

9 A. I would have been the one to make the configuration in  
10 CATS if we were to blacklist them, and Rightscorp was the only  
11 entity where we had a technical need to go so far as to reject  
12 at the mail server, but we don't reject from the mail server  
13 for any other, any other complainant.

14 Q. Mr. Beck, would you please turn to tab 5 in your binder?

15 MR. OPPENHEIM: In our binder?

16 MS. GOLINVEAUX: Our binder.

17 BY MS. GOLINVEAUX:

18 Q. Mr. Beck, as part of this litigation, did you create a  
19 report using CATS to match RIAA notices to customer account  
10:51:04 20 numbers?

21 A. Yes.

22 MS. GOLINVEAUX: Your Honor, I'd move to admit DX 125  
23 into evidence.

24 MR. GOULD: No objection.

25 THE COURT: It's received.

1 BY MS. GOLINVEAUX:

2 Q. Mr. Beck, can you walk us through, what is this report?

3 A. Sure. So this report is two columns. This is a report  
4 matching the, the subject line from the RIAA's notices within  
5 the time scope in question, and the column on the right is the  
6 Cox customer account number, which may be sometimes referred to  
7 as an ICOMS ID.

8 Q. So what does this report tell us?

9 A. So for each of the, each of the RIAA complaints in scope,  
10 this tells us which customer account that complaint was  
11 associated to. We basically are taking the complaint with that  
12 subject, finding the associated ticket within CATS, and then  
13 looking for the customer account number from that ticket.

14 MS. GOLINVEAUX: James, would you please pull up  
15 Plaintiffs' 547?

16 Q. Now, Mr. Beck, you may recall this is one of the ticket  
17 report excerpts for a subscriber that Mr. Gould took you  
18 through earlier this morning.

19 A. Yes.

20 10:53:27 Q. Do you remember that?

21 A. Yes.

22 Q. And he offered this as an example of a subscriber had  
23 received multiple tickets. Do you remember that?

24 A. Yes.

25 Q. Mr. Beck, can you tell from this ticket excerpt that's

1505

1 Plaintiffs' 547 how many RIAA notices this subscriber got? Are  
2 you able to tell that?

3 A. No. The report is not distinguishing the sender of the  
4 origin complaint for each ticket, no.

5 Q. So you can't tell from this ticket excerpt?

6 A. No.

7 Q. Okay. If we filter for this customer in the report we  
8 were just talking about, the subject to accounts report that  
9 links customers to RIAA notices, would we be able to determine  
10:54:31 10 that?

11 A. Yes. The subject to complaints would contain all of the  
12 RIAA complaints in the -- in scope, and it would match them to  
13 their corresponding customers. So yes.

14 MS. GOLINVEAUX: James, if you could pull back up,  
15 please, DX 125? And if you could search on that customer  
16 number in that ticket excerpt Mr. Gould took him through?

17 Q. So, Mr. Beck, it looks like we got one hit here on this  
18 customer number. What does that tell you?

19 A. If the customer account number in question, the ICOMS ID  
10:55:59 20 in question, appears in this report once, then that was one,  
21 one RIAA notice associated to that customer.

22 Q. So we could tell from that that this customer received  
23 exactly one RIAA notice; is that correct?

24 A. Yes.

25 Q. I see.

1                   You can take that down, James.

2                   Could you bring back up DX 125, please?

3                   Now, Mr. Beck, you said this report covered all the  
4 copyright notices Cox received from the RIAA during the period  
5 at issue, February 2013 to November of 2014, right?

6                   A.    Yes.

7                   Q.    Mr. Beck, do you recall approximately how many notices are  
8 listed out on this report?

9                   A.    This report had -- I believe it was in the 163, 164,000.

10:57:01 10                   Q.    And were some of the RIAA notices associated with the same  
11 account number?

12                   A.    Yes. Yes, they would, yeah.

13                   Q.    How many different account numbers are listed on this  
14 report?

15                   A.    That -- if I remember correctly, I believe it was near  
16 58,000. It was approaching 58,000, if I remember right.

17                   Q.    58,000?

18                   A.    Yeah.

19                   Q.    And that would be the total number of Cox subscribers who  
10:57:31 20 received RIAA notices during the period?

21                   A.    Yes.

22                   Q.    And you mentioned earlier that Cox has both business and  
23 residential customers. Does this report indicate whether an  
24 account is residential or business?

25                   A.    No, it does not.

1 MS. GOLINVEAUX: James, could you please bring up  
2 PX 19?

3 BY MS. GOLINVEAUX:

4 Q. Mr. Beck, this is the ticket actions report that you were  
5 testifying about earlier. Do you remember that?

6 A. Yes.

7 Q. And could you just remind the jury at a high level what  
8 this report is?

9 A. Sure. So the ticket action history, I'll try to boil this  
10 down, of the RIAA notices in scope, of the customers associated  
11 with those, for that set of customers, we gathered all of the  
12 copyother tickets for 2012, 2013, 2014, regardless of the  
13 sender, and this report shows all of the actions that occurred  
14 within those tickets.

15 Q. And, Mr. Beck, I'll represent to you that there's a little  
16 more than 315,000 tickets listed on this report, and remind us,  
17 approximately how many subscriber accounts got the RIAA  
18 notices?

19 A. I believe that was -- the subscriber accounts, I believe,  
20 was nearly 58,000.

21 Q. Okay. So we've got 315,000 and change tickets and  
22 approximately 58,000 subscribers. So on average, approximately  
23 how many copyright tickets is that per subscriber over the  
24 three-year period?

25 A. So over the three-year period, if I just do

1508

1 pencil-in-the-air math, 58,000, we make it 60. Pull the  
2 315,000 out, about 300. You're like 60 into 300, 6 into 5.  
3 You're talking about 5-point something per customer average.

4 Q. Over the two-year period?

5 A. Three-year.

6 Q. Three-year period. Thank you.

7 And to be clear, that average includes all the Cox  
8 Business subscribers on the list, correct?

9 A. That's correct, yes.

11:00:28 10 Q. Okay. Let's -- I'm not going to belabor this report  
11 because Mr. Gould --

12 THE COURT: How much more do you have? I'm sorry.

13 MS. GOLINVEAUX: Your Honor, I have about ten  
14 minutes.

15 THE COURT: Okay. Then let's take our mid-morning  
16 break at this stage. Let's take 15 minutes, and we'll come  
17 back and continue with this testimony. All right. You're  
18 excused. Thank you.

19 NOTE: At this point, the jury leaves the courtroom;  
20 whereupon the case continues as follows:

21 JURY OUT

22 THE COURT: All right. Anything before we break?

23 NO RESPONSE

24 THE COURT: Okay. Then let's take 15 minutes. We're  
25 in recess.

1                   NOTE: At this point, a recess is taken; at the  
2 conclusion of which the case continues in the absence of the  
3 jury as follows:

4 JURY OUT

5                   THE COURT: All right, good morning. Good morning,  
6 Mr. Buchanan. You're at the podium, I assume, for a reason.

7                   MR. BUCHANAN: I am, Your Honor.

8                   THE COURT: Okay.

9                   11:22:07 MR. BUCHANAN: And it's not to testify. No, the --  
10 it's an issue with regard to the order of witnesses.

11                  THE COURT: Yes, sir.

12                  12 MR. BUCHANAN: So this morning, the plaintiffs  
13 advised that they were moving Dr. Lehr up two spots. He'd been  
14 set for three days. And they just gave me his demonstratives,  
15 which would have been due 9 a.m. this morning. So I object to  
16 them putting him on prior to those other witnesses. I think we  
17 should maintain the order we had. It would be unfair prejudice  
18 to us.

19                  19 THE COURT: Yeah, what -- how much time do you  
20 need -- when would he go on?

21                  21 MR. GOULD: Your Honor, what we informed defendants  
22 this morning was that depending on how long Mr. Beck and  
23 Mr. Carothers took, we may advance Dr. Lehr in front of a  
24 couple of videos because he's here and present and gave them  
25 that notification as a courtesy and give them the slides. It's

1 not happening for several hours at most.

2 We just don't know how long these witnesses are going  
3 to go, so Dr. Lehr will either go on after -- sometime this  
4 afternoon or sometime tomorrow morning, which was always the  
5 intention.

6 THE COURT: Okay. All right. Put him on tomorrow  
7 morning at the earliest, and give counsel an opportunity to  
8 review the demonstratives.

9 MR. BUCHANAN: Thank you, Your Honor.

11:23:25 10 THE COURT: All right. Anything else?

11 MS. GOLINVEAUX: Your Honor, quick question.

12 THE COURT: Yes.

13 MS. GOLINVEAUX: In light of Your Honor's ruling at  
14 the last sidebar, I just wanted to raise one issue before I  
15 continue with Mr. Beck.

16 THE COURT: Yes.

17 MS. GOLINVEAUX: I'd like to -- there's a line of  
18 questioning, a short line of questioning I'd like to pursue,  
19 and I want to make sure I'm not bumping up against what Your  
11:23:42 20 Honor ordered. What I would intend to ask Mr. Beck is whether  
21 he looked at CATS data during the claims period to look at the  
22 incidence of repeat infringer rates specifically and whether he  
23 discussed that with anyone, and I just want to make sure that  
24 we're on the same page before that proceeds.

25 THE COURT: So are you going to take him through the

1 number of repeats after three notices and six notices? Is that  
2 what you're talking about?

3 MS. GOLINVEAUX: No, Your Honor. I intended simply  
4 to ask him whether he was -- he reviewed CATS data during that  
5 period to determine those types of --

6 THE COURT: Just generally whether he was keeping an  
7 eye on the --

8 MS. GOLINVEAUX: And whether he was discussing that  
9 with others at Cox.

11:24:28 10 THE COURT: Okay. How specific are you going to get?  
11 I guess that's my problem.

12 MS. GOLINVEAUX: That is how specific I would get,  
13 Your Honor. I would just ask him whether that was something he  
14 would do, he'd query the CATS database to look at the incidence  
15 of repeat infringer rates.

16 THE COURT: Okay. All right.

17 MR. GOULD: I have a question about that. I'm not  
18 sure I --

19 THE COURT: Well, come to the podium.

11:24:57 20 MR. GOULD: Thank you, Your Honor. I'm not sure I  
21 understand. It sounds like the purpose is to tell the jury  
22 that Mr. Beck was looking at it and that he told Carothers, so  
23 Carothers could talk about what he -- it all sounds a bit like  
24 the back door to talking about data analysis and studies, that  
25 were as you well know --

1                   THE COURT: I'm going to allow it. Thank you. I  
2 mean, I've ruled previously that if there was communications  
3 going back and forth generally, then that certainly would be  
4 something that would be admissible, and so your exception is  
5 noted.

6                   All right, Joe, let's get our jury.

7                   NOTE: At this point, the jury returns to the  
8 courtroom; whereupon the case continues as follows:

9 JURY IN

11:26:16 10                   THE COURT: All right. Please, have a seat.

11                   Can we get our witness back, please?

12                   THE COURT SECURITY OFFICER: All right, sir. Come on  
13 in, please.

14                   THE COURT: Please, proceed.

15                   MS. GOLINVEAUX: Thank you, Your Honor.

16                   Could you pull back up PX 19, please?

17 BY MS. GOLINVEAUX:

18 Q. So, Mr. Beck, before we broke, we were looking at PX 19,  
19 which is the ticket action report, and you testified that this  
11:27:23 20 shows -- for the Cox subscribers who received RIAA notices, you  
21 said it was approximately 58,000, this report shows all the  
22 copyright tickets they got from any source during the period.

23 Is that correct?

24 A. That is correct.

25 Q. Okay.

1 A. 2012, 2013, 2014, all senders.

2 Q. Thank you.

3 And so just briefly to orient the jury to this  
4 report, if you could take us through the first subscriber  
5 listed, the very first subscriber listed on the report, and  
6 tell us what this data shows us?

7 A. Okay. So the report is grouped by the ICOMS ID, which is  
8 the customer account number. So for any particular customer  
9 account, we're going to see all of the -- all of the entries  
11:28:17 10 grouped together to make it easier to see it from that  
11 standpoint, at a customer grouping, if you will.

12 So the first data row here for -- it's an account  
13 number ending in 50115, it is the only row for this account.  
14 So we'll just quickly walk through that row. Second column has  
15 a ticket ID. That's the CATS ticket number. The create date  
16 next to that is when CATS -- when the CATS ticket was created,  
17 and then we have IP address and source port. Those are both  
18 values that we extracted from the original notice or complaint.  
19 So those are pivotal in identifying, you know, that customer  
11:29:10 20 account.

21 The next column is abuse type, and these are copy  
22 other. Of course, that's the abuse type that is going to refer  
23 to the copyright complaints here.

24 The next column is action date, so that's the date  
25 and time that this particular action occurred, and I believe we

1 did all of these in GMT.

2                   And then the next column is action. So that's the  
3 particular action -- each row in the report is an action. So  
4 if a ticket had more than one action, it would have, you know,  
5 more than one row in a series there. So this action says  
6 changed status to closed, and that is the only row for this  
7 ticket and the only row for this customer. And that was --  
8 we're talking about July of 2014.

9                   So for me looking at this, this is telling me that  
11:30:10 10 this is a -- this was going to be the first complaint for this  
11 customer. So this would have been a hold for more, and that's  
12 why we just see the status changed to closed.

13 Q. So can you tell from the report, and I apologize, maybe  
14 this is what you're saying, but how many tickets this customer  
15 ending in 115 received during the period?

16 A. Just the one ticket.

17 Q. And you could tell that because the customer number only  
18 appears once; is that correct?

19 A. Yes. The results are grouped by ICOMS ID, which is the  
11:30:44 20 customer account number. So if there were additional tickets  
21 or actions related to this customer, they would appear right  
22 here, next to this row. Since that's the only row we see with  
23 that ICOMS ID, then we know that is the only ticket and the  
24 only action for that particular customer in the scope of this  
25 report.

1 Q. And you indicated with respect to the action, that this  
2 looked like a hold for more. How do you -- how do you  
3 determine that?

4 A. So this is just based on the fact that the ticket was  
5 closed, and there are no tickets preceding it. And since this  
6 report goes back to the beginning of 2012, so that tells me  
7 that throughout 2012 and throughout 2013 and all the way up  
8 through this point, July of 2014, there are no previous  
9 copyother tickets for this customer.

11:31:34 10 So the natural conclusion here is that this is the  
11 first one, and if this is the first one, our appropriate step  
12 there is to mark it as a hold for more.

13 Q. Okay.

14 A. And so far within the scope of this, no additional  
15 complaints -- no additional tickets were created. So we're not  
16 seeing any additional rows in the report.

17 Q. Okay. So let's just do one more, Mr. Beck. Looking at  
18 the very next customer listed in this report ends in Customer  
19 No. 63715, take us through what happened with this customer  
11:32:15 20 during the period.

21 A. Sure. So I think we've touched on what each of the  
22 columns mean. So we'll take a quick read across down each of  
23 these rows and kind of form a story. So --

24 Q. Before you start, Mr. Beck --

25 A. Okay. Sure.

1 Q. I'm sorry to interrupt you, but why is this customer  
2 listed out -- it looks like some of the ticket numbers repeat.  
3 Can you explain that for us?

4 A. Certainly. So each row in the report will be a distinct  
5 action, and we're seeing the actions in column H. So if a  
6 given ticket ID had multiple actions within it, then we'll see  
7 a row for each of those actions.

8 And so for the highlighted ones, you see there are  
9 three rows with the same ticket ID for this customer. So there  
11:33:05 10 are three corresponding actions and the action dates next to  
11 them.

12 Q. And I'm sorry, but before you move off the ticket ID --

13 A. Uh-huh.

14 Q. -- can you tell from this how many total tickets this  
15 customer got during that two-year period?

16 A. Certainly. So we know it's grouped by ICOMS ID, so we  
17 know that, you know, the -- they're all going to appear in a  
18 row. So we have, you know, row 3 through row 12 here. So that  
19 tells me we have ten rows for this ICOMS ID.

11:33:33 20 If we look at the second column, though, that's the  
21 ticket ID. So we have to count the number of unique tickets,  
22 and I believe we're sorted here probably by ticket ID after  
23 customer account. So it should be pretty easy to eyeball.

24 So we have one, a couple of rows for the second one,  
25 there's three, that's four, and then five. So it appears to be

1 five tickets actually for the customer.

2 Q. Okay. Thank you.

3 And can you walk us through the actions in the action  
4 column for this particular customer?

5 A. Certainly. So starting at the top, and that'll bring us  
6 down chronologically, the first one, there's one row for that  
7 ticket. That's -- yep, 5303 is the ticket. The action was  
8 changed status to closed.

9 So much like the first example, we see that there  
11:34:26 10 were no tickets for this particular customer account throughout  
11 all of 2012, 2013, and leading up to this particular -- you  
12 know, this first row in May of 2014, and the action was simply  
13 changed status to closed. So that should be a hold for more  
14 situation. So that ticket would be marked as closed, and that  
15 would be the only action for that ticket.

16 The next ticket, we see three rows for it. Thank  
17 you. So we see that the action toward the customer was that we  
18 suspended the customer's data service, and I think we discussed  
19 before, that's putting them in the abuse walled garden,  
11:35:13 20 temporarily interrupting their internet service.

21 Then immediately afterwards, the ticket status is  
22 changed to closed, and that's normal. Once we take the  
23 customer-facing notification, we mark the ticket as closed,  
24 agents are still able to view these tickets, make additional  
25 notes, take additional actions if they need to, anything they

1 want to do. It's just by marking it closed, we're basically  
2 filing it, you know. We're setting it down and saying, okay,  
3 we've taken the customer-facing notification, we're going to  
4 mark that as closed.

5 And then we see shortly --

6 Q. Mr. Beck, before you move on, so why -- so it looks like  
7 first ticket got changed status to closed, and you explained  
8 that's hold for more?

9 A. Uh-huh.

11:35:57 10 Q. And the very second ticket, am I reading this correctly,  
11 the customer got suspended; is that right?

12 A. That's correct.

13 Q. And why might that be based on how CATS operates?

14 A. Yeah. Normally, we would have expected that second notice  
15 to be an e-mail warning to the customer. So if this was a  
16 suspension action, that tells me that the customer probably  
17 didn't have any e-mail addresses on file with us. So maybe  
18 they don't have any cox.net e-mail addresses and they don't  
19 have a preferred e-mail address listed in our billing system.

11:36:33 20 So without an e-mail address, we obviously can't send  
21 an e-mail warning, but we still want to make sure we're  
22 notifying this customer. So although suspending their service  
23 is, you know, several steps further in, we're still going to  
24 skip ahead to that because that's the first viable action we  
25 have available to us since we can't send them an e-mail. We've

1 already done a hold for more. So we go ahead and suspend the  
2 customer service to get their attention, you know, start that  
3 discussion, get that education going.

4 Q. Okay. And with respect to that same ticket, after  
5 suspended, it says changed status to closed. I think you were  
6 explaining why that would be.

7 A. I did, yes. So once we notify the customer, once we have  
8 taken our, you know, actions on a ticket, once we've done what  
9 we're going to do, for the most part, we'll go ahead and mark  
11:37:25 10 the status as closed. And a rep can still get into the ticket  
11 and make changes afterwards if they need to, if they're talking  
12 to a customer, or whatever they need to do there. We're just  
13 filing it.

14 Q. Okay.

15 A. And then the third action for this ticket is reactivated  
16 the customer. Of course, that's the natural flow. You know,  
17 we've suspended them, so they've either seen the walled-garden  
18 content and/or they have called in and talked to somebody, and  
19 now we're reactiving their service now that we have, you  
11:37:56 20 know, properly notified them.

21 Q. What happens next?

22 A. So after that, we move on to another ticket, and it has  
23 two rows here.

24 Q. Well, this is the same customer, right?

25 A. Same customer still.

1520

1 Q. So we're looking at five tickets for this customer; is  
2 that right?

3 A. Yes, that's correct.

4 Q. Okay.

5 A. So now we're on the third ticket. This is over a month  
6 later, so we're talking about close to five weeks later, I  
7 think.

8 Q. Uh-huh.

9 A. We've gone from May 21 to June 27 of 2014. So the action  
11:38:33 10 here was sent warning, and we've discussed that's sending the  
11 e-mail warning notification to the customer. And since this is  
12 a sent warning, we -- we're going to see the final column here  
13 finally get some play, the action content form.

14 This is something that would only be populated in the  
15 report for an e-mail type of action where we've based that  
16 e-mail on a template form that we have in our system, and so  
17 this column describes what template form we built that e-mail  
18 from.

19 So in this case, it says DMCA, and that's just the  
11:39:17 20 simple descriptive name of our residential e-mail warning form.  
21 So yep, we sent them an e-mail warning -- we sent them the  
22 e-mail warning form. This would have been our template letter.  
23 It would have had a copy of the associated complaint appended  
24 to the bottom of that e-mail letter as well, and then beneath  
25 that, we'll see the action that shows we changed the status to

1 closed.

2 Q. Okay. And am I reading this correctly that there is two  
3 additional tickets for this customer that were both sent  
4 warnings and changed status to closed?

5 A. Yes, that's correct.

6 Q. Okay. Would the -- so they -- this customer had a total  
7 of five tickets, with the last one coming in in July, is that  
8 16 of 2014; is that right?

9 A. Yes, that's correct.

11:40:02 10 Q. Okay. And can you tell whether this customer got any more  
11 tickets during the period?

12 A. During the period, so after July 16, for the period of  
13 this report, there are no additional tickets for this customer.  
14 Otherwise, they would appear right below this row in sequence  
15 with the rest of them. So that was the end of their ticket  
16 history for this report for that customer.

17 Q. Okay. And you explained that with respect to this  
18 customer, they were likely suspended right after the first hold  
19 for more because they may not have had an e-mail address on  
11:40:37 20 file with Cox; is that right?

21 A. That's correct.

22 Q. And so then after they're reactivated, we see a warning  
23 going out. What does that data tell you?

24 A. So that tells me that somewhere in between, an e-mail  
25 address has been configured in the contact information for that

1 customer. The likelihood is that when they were suspended,  
2 they probably ended up talking to a representative on the  
3 phone. So they probably went ahead and put an e-mail address  
4 on file as contact information at that time.

5 Q. Okay. Okay. Thank you, Mr. Beck. That's very helpful.

6 And to be clear, these are simply the first two  
7 customers listed out in this massive ticket action report,  
8 right?

9 A. That's correct.

11:41:20 10 Q. Okay. Thank you.

11 You can take that down.

12 Now, Mr. Beck, as the administrator of CATS, the guy  
13 in charge of CATS, did you ever look at CATS data during the  
14 2013-2014 time frame to look at the incidence rates of repeat  
15 offense or repeat tickets of accused Cox subscribers?

16 A. Yes.

17 Q. And did you ever discuss that data with anyone at Cox?

18 A. Yes. Yes, I did. That data would have been discussed  
19 with Randy Cadenhead, Jason Zabek. I do have some memory of  
11:42:00 20 discussing that with Matt Carothers as well.

21 And beyond that, I don't remember specifically, but I  
22 would imagine that would have been discussed with other members  
23 of the Corporate Abuse Team as well.

24 Q. Okay. Mr. Beck, I just have a few more questions for you.  
25 If we could pull up PX 365, please? Now, Mr. -- Your Honor, I

1 believe -- is this PX 360 -- 365, thank you.

2 Your Honor, I believe this one's already been  
3 admitted.

4 THE COURT: All right. Yes, it has.

5 BY MS. GOLINVEAUX:

6 Q. Mr. Beck, in connection with this litigation, were you  
7 asked to provide information about the number of subscribers  
8 that Cox terminated for AUP violations?

9 A. Yes.

11:43:06 10 Q. Okay. And looking at this, at this document, this is  
11 another set of these interrogatory responses that we looked at,  
12 a different set with plaintiffs' counsel earlier this morning.  
13 Do you remember that?

14 A. Yes.

15 Q. This is where Cox is providing some information as part of  
16 the lawsuit?

17 A. Yes.

18 Q. Okay. If we could --

19 MR. GOULD: Your Honor, a brief issue on this before  
11:43:26 20 the document is displayed? Can we approach?

21 THE COURT: Yes, sir.

22 NOTE: A sidebar discussion is had between the Court  
23 and counsel out of the hearing of the jury as follows:

24 AT SIDEBAR

25 THE COURT: Yes, sir.

1                   MR. GOULD: Your Honor, I think Ms. Golinveaux has  
2 the chart. I don't have one with me. It shows by quarter the  
3 number of terminations of their AUP violations, and Mr. Beck  
4 will testify, as he did in his deposition, that each of those  
5 was in response to copyright.

6                   Now, what the data shows is a pretty substantial  
7 spike in queue form 2014, which corresponds to the time during  
8 and after which the BMG lawsuit was filed. It came up as a  
9 precautionary matter to understand defendants' intent with  
11:44:27 10 respect to arguing or presenting information and suggests that  
11 towards the end of this period, they did much more and why they  
12 did so, and if they're doing that, I think we're getting pretty  
13 close to opening the door about a lot of information about the  
14 BMG case and what they did and why in that period.

15                   THE COURT: Go ahead.

16                   MS. GOLINVEAUX: Your Honor, this is information the  
17 plaintiffs requested in discovery. I'm merely going to walk  
18 him through the total number of AUP -- termination for AUP  
19 violations for 2013 and 2014.

11:45:04 20                   THE COURT: Can I just see the date?

21                   You can ask him whether -- anything about the 16 in  
22 the final quarter of 2014? Are you going to ask him?

23                   MR. OPPENHEIM: Somebody's -- I mean, if you're going  
24 to put that in front of the jury, it's going to raise questions  
25 that should be answered. The problem is --

1                   THE COURT: When was BMG filed?

2                   MR. OPPENHEIM: Right then.

3                   MR. GOULD: November 26, 2014.

4                   THE COURT: I'm not going to allow it. It's not  
5 significant enough, and you may take him through that and you  
6 may ask him whether he's aware of any reason why that number  
7 spiked at that stage. What's he going to say if he's asked  
8 that question?

9                   MS. GOLINVEAUX: I don't think he's aware, Your  
11:45:51 10 Honor.

11                   MR. GOULD: Well, could I ask him the leading  
12 question that you changed your practices because you'd been  
13 sued for the very claims presented here?

14                   THE COURT: No.

15                   MR. GOULD: I don't think anyone is looking to open  
16 the door.

17                   THE COURT: Yeah, well --

18                   MR. ELKIN: Your Honor, could she elicit information  
19 without regard to this and then simply if he needs to refresh  
11:46:08 20 his memory, resort to this?

21                   THE COURT: Sure, however you want to present it.  
22 You know, I think it's legitimate to inquire as to when you've  
23 got a jump the way that those numbers jump off the sheet, but I  
24 don't want to open the door to BMG. And if he's unaware of it  
25 and why it spiked, then that takes the issue -- then there's no

1 issue.

2 MR. OPPENHEIM: Well, except then the question is do  
3 I ask Mr. Carothers the question -- I mean, somebody has to --  
4 it seems obvious that that has to be why it happened, Your  
5 Honor, at least the implication.

6 THE COURT: We're not going -- we're not going there  
7 based on just that document. Okay? I mean, that would open up  
8 BMG. It's too significant.

9 MR. OPPENHEIM: Would it be simpler to just not show  
11:47:05 10 him that quarter?

11 THE COURT: Do you want to ask him the totals for the  
12 year?

13 MS. GOLINVEAUX: Sure. That's fine, Your Honor.

14 THE COURT: Why don't you do it that way.

15 MR. GOULD: Ask for 2013 and '14?

16 THE COURT: And '14, yeah.

17 MR. GOULD: Without the document?

18 THE COURT: Without the document.

19 MR. GOULD: Thank you.

20 NOTE: The sidebar discussion is concluded; whereupon  
21 the case continues before the jury as follows:

22 BEFORE THE JURY

23 BY MS. GOLINVEAUX:

24 Q. So, Mr. Beck, in connection with this litigation, were you  
25 asked to provide information about the total number of Cox

1 subscribers that Cox terminated for AUP violations for the  
2 years 2013 and 2014?

3 A. Yes.

4 Q. And do you recall the total number of subscribers that Cox  
5 terminated in those years?

6 A. The total number was low 30s. I feel like it was 31, 32,  
7 33. I can't remember the exact number, but it was in the 31 to  
8 33 range, if I remember correctly.

9 Q. And that's the total number of subscribers that Cox  
11:48:29 10 terminated for violations of its AUP during the years 2013 and  
11 2014?

12 A. Yes, that's correct.

13 Q. And, Mr. Beck, of those 31, 32, or 33 terminations, do you  
14 know how many were for -- in connection with a customer getting  
15 a copyright notice?

16 A. They were all for copyright.

17 Q. All of them?

18 A. Yes, that's correct.

19 Q. And, sir, of those terminated subscribers, do you recall  
11:48:52 20 how many had received copyright notices specifically from the  
21 RIAA?

22 A. I believe it was 13. I believe it was 13, if I'm  
23 remembering correctly.

24 Q. If we pull up the ticket action report and sort on  
25 terminations, would we get that number?

1 A. Yes. The ticket action history report would reflect  
2 termination actions. We could sort by action.

3 MS. GOLINVEAUX: James, could you pull the ticket  
4 action report and sort on terminations?

5 Q. Mr. Beck, how many does this show?

6 A. Thirteen.

7 Q. Okay. So does that tell you 13 subscribers who received  
8 RIAA notices during the period were terminated by Cox?

9 A. Yes.

11:49:53 10 MS. GOLINVEAUX: Thank you.

11 Your Honor, no further questions.

12 THE COURT: All right. Thank you. Redirect?

13 MR. GOULD: Yes, please.

14 MS. GOLINVEAUX: Pass the witness, Your Honor.

15 THE COURT: All right. Thank you.

16 REDIRECT EXAMINATION

17 BY MR. GOULD:

18 Q. Mr. Beck, you were asked a number of questions and talked  
19 at some great length about forged copyright infringement  
11:50:23 20 notices. Do you recall that?

21 A. Yes, I do.

22 Q. There's no suggestion here that any of the RIAA notices  
23 are forged, is there?

24 A. No. None of RIAA notices were forged, to my knowledge.

25 Q. You testified about instances of infringement where

1 someone else using the customer's account might be the one  
2 doing the infringement, correct? Do you recall that?

3 A. Yes. That can happen a number of ways.

4 MR. GOULD: Can we pull up PX 184, please? This is  
5 already in evidence.

6 Q. This is Cox's Residential Acceptable Use Policy. Are you  
7 familiar with this, sir?

8 A. Generally.

9 Q. And if we could -- we looked at this the other day. If we  
11:51:13 10 could scroll down to on the second page and highlight or call  
11 out the content under -- keep going, please -- under User  
12 Content, just blow up that whole paragraph?

13 And, sir, do you see that this user AUP that Cox  
14 requires every subscriber to agree to says: You -- and that  
15 means the subscriber -- are solely responsible for any  
16 information that is transmitted from your IP address or your  
17 account on the web or other internet services. You must ensure  
18 that the recipient of the content is appropriate and must take  
19 appropriate precautions to prevent minors from receiving  
11:51:52 20 inappropriate content.

21 Are you familiar with that?

22 A. I see that.

23 Q. This means that the customer, the subscriber is  
24 responsible for whatever happens to their IP, correct?

25 A. I don't know that I'm in a position to interpret the legal

1530

1 context of our terms of service.

2 Q. You understand that this means the subscriber is  
3 responsible for the transmission of information through their  
4 IP; isn't that correct?

5 A. I can read the document.

6 Q. Is that how you understand it?

7 MS. GOLINVEAUX: Objection, Your Honor.

8 THE COURT: Overruled. You can answer the question  
9 is that how you understand it or not, or I don't feel  
11:52:34 10 qualified. Answer it the way you would wish.

11 THE WITNESS: Yeah. To me, I mean, for terms and  
12 conditions, it feels like the sort of thing that a lawyer would  
13 interpret the meaning of to me.

14 THE COURT: Okay. Move on.

15 BY MR. GOULD:

16 Q. Let's move to PX 178 and call this up. It's already in  
17 evidence. This is the Cox Business customer AUP. And if we  
18 could scroll to the bottom of page 2, please, and the top of  
19 page 3?

11:53:02 20 And there's language that kind of touches on a  
21 similar point here. It says to the business customers:  
22 Customer Responsibility for End Users. All references to  
23 "Customer" in this AUP shall apply to any end-user of the  
24 Service(s). If Customer allows others to use the Services,  
25 Customer is responsible for ensuring that all such end-users

1 comply with this AUP. Customer is responsible for ensuring  
2 that all accounts, sub-accounts, and alternative account names  
3 associated with Customer's principal account comply with this  
4 AUP. In the event of a suspected violation of this AUP,  
5 Customer will cooperate with Cox Business and will promptly  
6 provide Cox Business with information about Customer's  
7 end-users upon request from Cox Business.

8 Did I read that correctly?

9 A. I was doing a little bit of reading of my own at the same  
11:54:13 10 time.

11 Q. You understand, sir, that this says that the Cox Business  
12 customer is responsible for the end user's activity through  
13 their account?

14 A. As stated here, yes.

15 Q. Thank you.

16 Now, you testified about, something about military  
17 bases, customers who are military bases, but you understand,  
18 sir, that Cox doesn't provide internet service to the military  
19 base itself, correct? In fact, Cox provides perhaps internet  
11:54:48 20 service to housing on a military base?

21 A. I can't say that we do or don't do base versus  
22 residential. I know we have military customers. I know we  
23 have military bases that are customers.

24 Q. You think that Cox has military bases that are actual  
25 customers?

1 A. It's possible. I don't know.

2 Q. You don't know.

3 A. I mean, I don't know the distinction. I know that we have  
4 military bases that are customers. I don't know what the  
5 individual situations are of the users that are using those  
6 services.

7 Q. Would it surprise you if those services were provided to  
8 housing on the military bases?

9 A. No.

11:55:28 10 Q. And you would agree that U.S. government and the military  
11 both prohibit copyright infringement?

12 A. That's what we're discussing here, I'm sure.

13 Q. You testified about a number of e-mails that Cox received  
14 from customers in response to infringement notices from the  
15 plaintiffs. Do you recall that?

16 A. Yes.

17 Q. Do you see, Mr. Beck, that DX 455 is actually an e-mail  
18 from Cox?

19 A. Yes. That's from abuse@cox.net.

11:56:16 20 Q. And it may have an e-mail from the customer down below, so  
21 this is a response likely to a customer?

22 A. From the highlighted sections, I can't tell who the  
23 response is to.

24 Q. Well, we can scroll down and take a look. Do you see that  
25 the customer's name is redacted for confidentiality? Let's

1 scroll down a little bit and see what we see.

2 A. I don't think it notes that it's a customer's name that's  
3 redacted.

4 Q. So, so the customer sent an e-mail, and then Cox  
5 responded?

6 A. Okay. I see the text here. The recipient of the e-mail  
7 is trying to figure out where this is coming from. IP is not  
8 one of their main building. Okay.

9 Q. But the e-mail at the top is an e-mail from Cox, right?

11:57:24 10 A. Yes. That's from, that's from abuse@cox.net, yes.

11 Q. So if you're counting in the set of documents that your  
12 counsel has admitted, that she called e-mails from customers,  
13 this also counts e-mails from Cox, right?

14 A. No, this would not be a ticket. This is an action sent  
15 from a ticket based on a response from a customer, so --

16 Q. Your -- Ms. Golinveaux admitted into evidence a number of  
17 documents that were described as e-mails from customers. Do  
18 you recall that?

19 A. Yes.

20 11:58:01 Q. And this document here, 455, is one of those documents  
21 described as an e-mail from a customer, correct?

22 A. I would have to see that it was in the other set, but yes.

23 Q. Okay. Let's take a look at DX 655, and if we could pull  
24 up the top?

25 This is another e-mail that was described in the set

1 of e-mails from customers asking about plaintiffs' copyright  
2 infringement notices, and you see that this is just a rejected  
3 notice for -- the e-mail didn't go through? So --

4 A. I see this.

5 Q. I'm sorry?

6 A. Sorry. Yes, I see.

7 Q. So among these so-called 1,700 customer e-mails, we've  
8 seen e-mails from Cox, right, and we've seen rejected e-mails  
9 that never were delivered, right?

11:58:56 10 A. Yeah, they -- the e-mail from Cox was in response to a  
11 customer's reply to us. That was an interaction relating to  
12 one of the tickets. This one being a bounce message probably  
13 resulted in some additional research to try to find a better  
14 way to contact that customer.

15 Q. But if we look at the number 1,700, we have some from Cox,  
16 we have some that were rejected. So we don't know what the  
17 actual number of e-mails from customers is. Now, even if you  
18 assume that it's 1,700, those were in response, according to  
19 you, sir, to the 162,000, 162,000 notices from the RIAA in the  
11:59:34 20 2013-2014 time period, correct?

21 A. Yes.

22 Q. Okay. So 1,700 responses at the outside divided by  
23 approximately 160,000 notices is just about 1 percent. Do you  
24 agree with that, 1,700 into 160? It's 1 percent and change?

25 A. I don't think our e-mail notifications really require a

1 response. I don't think they're soliciting a response from the  
2 customer.

3 Q. That wasn't my question. My question was Cox received at  
4 the most 1,700 e-mail responses out of the 160,000 notices from  
5 RIAA, correct? And that's approximately 1 percent?

6 MS. GOLINVEAUX: Your Honor, may we have a sidebar?

7 THE COURT: Yes.

8 NOTE: A sidebar discussion is had between the Court  
9 and counsel out of the hearing of the jury as follows:

12:00:45 10 AT SIDEBAR

11 THE COURT: Yes.

12 MS. GOLINVEAUX: Sorry, Your Honor. The set of  
13 documents I sought to admit were DX 496 to 2200. The first  
14 e-mail Mr. Gould just showed the witness was DX 455.

15 THE COURT: Which is not admitted.

16 MS. GOLINVEAUX: Not in the set.

17 MR. GOULD: That's correct. That was a mistake on my  
18 part. I can look for a similar e-mail within the set and make  
19 the point, but certainly that was a mistake on my part.

12:01:16 20 THE COURT: Okay. Well, do you need the exhibit to  
21 make the point, the 163,000 versus the 1,700? Those figures  
22 are -- are they in evidence already or not?

23 MR. GOULD: I'm sorry, is what in evidence?

24 MR. OPPENHEIM: They're in, the figures are.

25 THE COURT: The figures are, all right. Okay. All

1 right. Well, I'll tell the jury that that exhibit wasn't  
2 admitted that you were asking about, and I don't know what you  
3 want to do about --

4 MR. OPPENHEIM: Why don't we just move the exhibit's  
5 admission and ask if it's an example of the types of e-mails  
6 that are contained within that exhibit?

7 MR. ELKIN: I think that the jury is entitled to know  
8 that this was not one of the exhibits that was elicited on  
9 Mr. Beck's testimony, because now it's misleading.

12:02:05 10 THE COURT: Yeah, what does 455 include that's  
11 different from the Beck exhibits admitted?

12 MR. GOULD: It has a Cox response. And I believe --  
13 maybe I misrepresent, but I'll have to double-check -- that  
14 within the set that defendants have admitted, I believe they  
15 are similar. Cox is the sender, which would reduce by volume  
16 the number of e-mails from customers.

17 My point is it's 1 percent if you consider all of  
18 them, it's less if you take out the ones from Cox that have  
19 duplication, and it's less if you take out the failure to  
12:02:40 20 deliver.

21 THE COURT: Okay. My question is do you think that  
22 this witness can -- is familiar with 455 and could recognize it  
23 and identify it as a Cox document or not? Is it a Cox  
24 document, or is it a document that you generated?

25 MR. GOULD: I think if we assume that he is the

1537

1 foundational witness for the 1,700, then he sure should be able  
2 to talk to that one.

3 MS. GOLINVEAUX: May I, Your Honor?

4 THE COURT: Yes.

5 MS. GOLINVEAUX: I think it's highly misleading for  
6 Mr. Gould to have told the jury that 455 was part of the set  
7 that we introduced when it was not part of the set we  
8 introduced. He misled the witness on that front as well.

9 THE COURT: Okay. I'll correct that.

12:03:27 10 MS. GOLINVEAUX: Thank you, Your Honor.

11 THE COURT: Now, the second question is, is -- where  
12 does this document come from? Where does the information in  
13 the document come from?

14 MS. GOLINVEAUX: We weren't provided it prior to  
15 Mr. Beck's testimony, so we're just seeing it for the first  
16 time right now, I mean, during his examination. So we'd have  
17 to look into that.

18 THE COURT: All right.

19 MR. GOULD: May I?

12:03:43 20 THE COURT: You may ask him whether he can identify  
21 the document. I'm going to tell them that the document was  
22 incorrectly identified as having been part of a group of  
23 documents that were part of the prior testimony and that we're  
24 going to see whether he can identify it at this time. Okay?  
25 And you go from there.

1 MR. GOULD: Thank you.

2 THE COURT: And if you independently can pull the  
3 numbers, 163,000 and 1,700, which I believe are --

4 MR. GOULD: Already there.

5 THE COURT: -- numbers that he testified, then your  
6 last question about is it a little more than 1 percent, that  
7 certainly, I don't believe, is objectionable.

8 MR. GOULD: Thank you, Your Honor.

9 MS. GOLINVEAUX: Thank you.

12:04:28 10 MR. GOULD: I apologize. It was never my intent to  
11 misrepresent.

12 NOTE: The sidebar discussion is concluded; whereupon  
13 the case continues before the jury as follows:

14 BEFORE THE JURY

15 THE COURT: All right. So we have lots of documents,  
16 as you know. The last exhibit, 455, I believe -- counsel  
17 believed was part of an earlier admitted series of documents  
18 with Mr. Beck. Turns out, it was not. So you should disregard  
19 the testimony that it, in fact, was part of that earlier called  
12:05:12 20 out number of documents. All right?

21 Go ahead, Mr. Gould.

22 MR. GOULD: Thank you, Your Honor.

23 BY MR. GOULD:

24 Q. Mr. Beck, you testified having familiarity with e-mails  
25 received from customers to cox@abuse.com, correct -- @.net?

1 A. Yes.

2 Q. And are you also familiar and aware that at -- from time  
3 to time, Cox abuse personnel respond to those e-mails?

4 A. Certainly.

5 MR. GOULD: I move admission of DX 455, Your Honor.

6 THE COURT: Why don't you ask him whether he can  
7 identify it?

8 BY MR. GOULD:

9 Q. Sir, we looked at the e-mail previously from Cox to a  
12:05:45 10 customer. Do you recall that?

11 A. I do.

12 Q. And that's the type of e-mail that you just described  
13 you're familiar with?

14 A. That would be an outbound action. I thought the  
15 collection in question was a collection of inbound e-mails  
16 from -- as responses to outbound notifications.

17 Q. You're also aware that Cox abuse personnel respond  
18 outbound to some of those messages from time to time?

19 A. They do. I thought that was a different -- I thought that  
12:06:15 20 was a different set, though.

21 THE COURT: The question is whether the exhibit that  
22 you just were looking at a minute ago is consistent with others  
23 that you have viewed where Cox is responding back to your  
24 subscribers.

25 THE WITNESS: Yeah. I'd say so, yeah. That's --

1540

1 that e-mail does show us responding back from a child ticket.

2 MR. GOULD: All right. Move to admit DX 455.

3 THE COURT: Any objection?

4 MS. GOLINVEAUX: No objection, Your Honor.

5 THE COURT: All right. It's received.

6 BY MR. GOULD:

7 Q. Now, again, back to the set of documents, e-mails received  
8 from customers, 1,700, 1,700 out of 160,000 notices from RIAA  
9 is approximately 1 percent, correct?

12:07:00 10 A. Somewhere in that neighborhood, I believe.

11 Q. Well, 1 and change. 1600 would be 1 percent of 160, so  
12 1,700, a hair over 1 percent, correct?

13 And when you were asked to pull the customer e-mails  
14 from CATS in response to the plaintiffs' notices, you undertook  
15 to identify and produce all of those e-mails, right?

16 A. Repeat that for me again? You think these --

17 Q. You were asked to go into CATS and find all of the  
18 customer e-mails that related to the RIAA's notices in the  
19 2013-'14 time frame, right?

12:07:45 20 A. I believe so, yes.

21 Q. And, in fact, you've produced all of those, correct?

22 A. All of the customer e-mails, reply inbound, those would  
23 have been complaints associated to child tickets. I'll try to  
24 remember specifically. Responses would have been complaints to  
25 child tickets. I'm trying to find where that distinction is.

1 The response from Cox to the customer would have been as an  
2 action within a ticket, whereas a response from a customer  
3 would be a complaint.

4 Q. I'm just talking about the customer e-mails to Cox.

5 A. Um-hum.

6 Q. In response to the RIAA notices, you produced all of them,  
7 correct?

8 A. I believe so.

9 Q. Okay. So if 1 percent of those notices generated e-mails  
12:08:48 10 from customers, that also means that 99 percent of the 160,000  
11 did not generate an e-mail from a customer, correct?

12 A. Mathematically speaking, yes. We wouldn't really expect  
13 them to, though.

14 Q. If we could pull up the second slide of this  
15 demonstrative, please?

16 And, Mr. Beck, this is the chart where we showed  
17 accepted deleted notices against warnings, suspensions, and  
18 terminations. Do you recall that?

19 A. Yes.

20 Q. And you kept making a distinction about the deleted  
21 notices, so let's assume for a moment that we left those out.  
22 Would you agree that the warnings, suspensions, and  
23 terminations adds up to approximately 600,000? I think it's  
24 actually 609,000?

25 A. That sounds about right.

1 Q. Yep. And 600,000 as a function of 2 million accepted  
2 notices, that comes to just about 70 percent, doesn't it? 70.

3 I'm sorry, 29 percent. It's the -- I think we can  
4 all agree that I'm not the mathematician in the court.

5 A. Rough math, that's about right.

6 Q. So even if you disregard the deleted notices, the number  
7 of customer-facing actions that Cox took in response to the  
8 2 million notices that it did accept was about 29 percent,  
9 which means that Cox took no customer-facing action in response  
12:10:38 10 to approximately 70 percent, correct?

11 A. No -- yes, that should be about right here. Yep. And --

12 MR. GOULD: No more questions, Your Honor.

13 MS. GOLINVEAUX: Your Honor, just two questions?

14 THE COURT: Yes, go ahead.

15 MS. GOLINVEAUX: Thank you, Your Honor.

16 RECROSS EXAMINATION

17 BY MS. GOLINVEAUX:

18 Q. Mr. Beck, are you aware that approximately 25 percent of  
19 the RIAA notices that came in to Cox during the claims period  
12:11:20 20 were directed to Cox Business customers?

21 MR. GOULD: Objection. Leading.

22 THE COURT: It's leading. Sustained.

23 BY MS. GOLINVEAUX:

24 Q. Mr. Beck, when Cox Business -- when a notice came in on a  
25 Cox Business customer, are you aware of how Cox and the

1 business customer typically communicated about that notice?

2 A. Yes, I am.

3 Q. And can you describe that for us?

4 A. For business customers, due to the nature of their  
5 business, we usually want to work directly with them if we can.  
6 We try our best to avoid suspending them if we can because that  
7 can have an impact on -- a heavy impact on their business. So  
8 with a business customer, although we'll often send them an  
9 e-mail, it's often as a follow-up to a phone call. They prefer  
12:12:16 10 to call business customers directly and speak with them  
11 directly to deal with issues like that.

12 Q. And, Mr. Beck, are you aware of the total number of RIAA  
13 notices that came in to Cox Business customers?

14 A. For business customers, generally speaking, our business  
15 customer complaint volume, you're going to be looking at 20 to  
16 30 percent of the volume of RIAA's complaints are for business  
17 customers.

18 Q. Okay. And with respect to the set of 1,700 e-mails that  
19 counsel was asking about, those are the written responses from  
12:12:55 20 Cox customers to Cox in response receiving a notice, the  
21 business customers may be calling back in; is that right?

22 A. That is true. Even the residential customers will often  
23 pick up the phone. Especially in this day and age, with this  
24 much phishing and stuff goes on, if they see an e-mail that  
25 says something is going on with the Cox service, they may be

1 like, well, let me just get my bill and call the phone number  
2 on it. That way I know I'm talking to the right people.

3 MS. GOLINVEAUX: Thank you, sir. No further  
4 questions.

5 THE COURT: Thank you. All right. May Mr. Beck be  
6 excused?

7 MS. GOLINVEAUX: Yes, Your Honor.

8 THE COURT: All right. You're excused with our  
9 thanks, Mr. Beck. Please don't discuss the testimony you've  
12:13:33 10 given with anybody until our trial is over. All right?

11 THE WITNESS: Okay.

12 THE COURT: All right. Have a good day.

13 THE WITNESS: Thank you.

14 WITNESS EXCUSED

15 THE COURT: All right. Next witness?

16 MR. OPPENHEIM: Your Honor, plaintiffs would call  
17 Matt Carothers.

18 MATT CAROTHERS, PLAINTIFFS' WITNESS, SWORN

19 THE COURT: Good afternoon, sir. Please, proceed.

12:14:46 20 DIRECT EXAMINATION

21 BY MR. OPPENHEIM:

22 Q. Good afternoon, Carothers -- Mr. Carothers. We've met  
23 before, correct?

24 A. We have.

25 Q. Nice to see you.

1                   You're currently employed at Cox?

2 A.    I am.

3 Q.    And you've been with Cox for approximately 18 years; is  
4 that right?

5 A.    A little over, yeah.

6 Q.    And between the years of 2001 and 2007, you were part of  
7 the abuse group, correct?

8 A.    Yes.

9 Q.    And in 2007, you transitioned to a different role in the  
12:15:16 10 security engineering department or group, correct?

11 A.    Yes.

12 Q.    So it's been 12 years since you were in the abuse group,  
13 correct?

14 A.    Correct.

15 Q.    So you're now more involved in security than you are  
16 abuse; is that correct?

17 A.    Well, abuse is part of security.

18 Q.    One of the tools that you use to detect security threats  
19 on the Cox network is called Procera, correct?

12:15:51 20 A.    Yes.

21 Q.    And Procera is what is referred to as a deep packet  
22 inspection tool?

23 A.    Yes.

24 Q.    Often people use the acronym DPI, deep packet inspection  
25 tool, for it?

1 A. That's correct.

2 Q. And a deep packet inspection tool looks at network traffic  
3 going back and forth across Cox's network, identifying broadly  
4 what types of traffic is there, and then stores statistics  
5 about that traffic, right?

6 A. That's correct.

7 Q. And among the things that the deep packet inspection can  
8 do is determine the volume of BitTorrent traffic on Cox's  
9 network?

12:16:36 10 A. That is correct.

11 Q. And so Cox can monitor the amount of BitTorrent traffic  
12 that a specific subscriber uses on a particular day?

13 A. We can.

14 Q. I'm sorry, did you say, "We can"?

15 A. We can.

16 Q. If Cox identified that a -- let me back up for a minute.

17 You understand that many users of BitTorrent will  
18 access sites like ThePirateBay to initiate their, their  
19 downloading process, correct?

12:17:11 20 A. Yes.

21 Q. And as head of security, you're aware that Cox can block  
22 subscribers from being able to access particular sites,  
23 correct?

24 A. No, that's not correct.

25 Q. Well, isn't it true that Cox has the technical capability

1547

1 of blocking sites?

2 A. Not really, no.

3 Q. Mr. Carothers, I took your deposition, right?

4 A. Yes.

5 Q. And I took your deposition on April 25, 2019, right?

6 A. Correct.

7 Q. And during that deposition, you were sworn under oath,  
8 were you not?

9 A. Yes.

12:17:56 10 Q. And you swore that you would tell the truth in that  
11 deposition, right?

12 A. I did.

13 Q. And in that deposition, on page 303, line 16 to 19, I  
14 asked you the following question and you gave the following  
15 answer:

16 So you're technically capable of doing a block, but  
17 you choose not to do so, but you don't block any -- strike  
18 that. Excuse me.

19 Starting at line 14, I apologize, on page 305:

12:18:30 20 You technically could block a torrent site, correct?

21 Answer: There is a technical capacity, but there is  
22 not a right to do so.

23 Was that -- was that your testimony when I took your  
24 deposition?

25 A. May I see the testimony?

1 MR. ELKIN: May we approach, Your Honor?

2 THE COURT: Yes.

3 NOTE: A sidebar discussion is had between the Court  
4 and counsel out of the hearing of the jury as follows:

5 AT SIDEBAR

6 THE COURT: Yes, sir.

7 MR. ELKIN: Thank you. This is another situation  
8 where I believe counsel may be trying to elicit some statement  
9 that Mr. Carothers had in his deposition, and if you read  
12:20:11 10 through at a couple of pages, he specifically says they can't  
11 block because of net neutrality, and there is a portion where  
12 he gets him to say you can't block a torrent site.

13 You can't possibly look at his testimony unless you  
14 read two or three pages in. It's not a clean admission. And I  
15 don't know what Mr. Carothers had in his mind when he answered  
16 that question, but he clearly said that they can't block it  
17 because of net neutrality. It's misleading.

18 MR. OPPENHEIM: That's an unfair --

19 THE COURT: Okay. You have a chance to respond.

12:20:45 20 MR. OPPENHEIM: The question and answer is very  
21 clear. I asked the question about the technical ability. Now,  
22 he can answer we may have had the technical ability, but we  
23 felt as though legally we couldn't, and I'm happy to get into  
24 that issue, but whether or not they have the technical ability  
25 is a very clean question. I'm happy to show you the

1 transcript, Your Honor. It's a clean question and a clean  
2 answer.

3 THE COURT: He read it correctly; is that correct?

4 MR. OPPENHEIM: Yes.

5 THE COURT: All right. Then it's for  
6 cross-examination. I'm going to allow it.

7 MR. ELKIN: Thank you, Your Honor.

8 THE COURT: All right. Your exception is noted.

9 NOTE: The sidebar discussion is concluded; whereupon  
10 the case continues before the jury as follows:

11 BEFORE THE JURY

12 BY MR. OPPENHEIM:

13 Q. Mr. Carothers, isn't it, in fact, true that Cox has the  
14 technical capacity to block a, a website, including a torrent  
15 site?

16 A. So let me clarify my answer. There is a way to block a  
17 site. It's not an effective way to block a site. It's  
18 trivially easy to get around.

19 Q. So Cox has the ability to block the site, but you believe  
12:22:05 20 that somebody who has technical abilities might be able to get  
21 around Cox's block. Is that what you're saying?

22 A. Trivially, yes.

23 Q. Trivial to you maybe.

24 A. Trivial to anyone.

25 Q. I'm pretty technically capable. I'm not sure I could do

1550

1 it, but how do you -- on what grounds do you say that it would  
2 be trivial for anyone?

3 A. So our blocking is based on something called DNS, or  
4 domain name system, and the way you would get around such a  
5 block is just to change your DNS servers. It's a few clicks.

6 Q. And your view is that anyone would know how to change  
7 their DNS servers. Is that your testimony?

8 A. Oh, absolutely. Anybody who can Google it.

9 Q. Could you please -- sorry. What number in the binder is  
12:23:22 10 PX 240?

11 Could you turn to, please, Exhibit PX 240? It should  
12 be in your binder.

13 Oh, we haven't provided it. Okay.

14 Do you have PX 240 in front of you?

15 A. I do.

16 Q. And is that a -- an e-mail that you sent on or around  
17 January 12, 2010?

18 A. It is.

19 MR. OPPENHEIM: We'd move to have this e-mail  
12:24:06 20 admitted, Your Honor.

21 MR. ELKIN: No objection, Your Honor, subject to our  
22 position from our motions in limine 2 and 3.

23 THE COURT: All right. It's received.

24 MR. OPPENHEIM: If we could just zero in on the  
25 header for a moment, please, there, Mr. Duval?

1 BY MR. OPPENHEIM:

2 Q. So, Mr. Carothers, you sent this e-mail on Tuesday,  
3 January 12, 2010, in the evening; is that right?

4 A. Yes.

5 Q. And you sent it to CCI - DAB - Abuse Team; is that right?

6 A. That's correct.

7 Q. And who, who would be included in that e-mail group?

8 A. DAB was the data advisory board. It was a  
9 cross-functional group of people from around the company who  
12:24:52 10 might have some interest in customer safety issues. So, of  
11 course, the customer safety team was in there, people like  
12 product development, marketing. Probably the legal team as  
13 well.

14 Q. And this e-mail, the subject of it is DAB Abuse call  
15 meeting minutes, correct?

16 A. Yes.

17 Q. And then it says 1/12/2010, so that would have been a  
18 meeting held that same day that you sent this e-mail, right?

19 A. Correct.

12:25:19 20 Q. And the -- you indicate then in the top of this that among  
21 the attendees at the meeting was Mr. Sikes, correct?

22 A. Yes.

23 Q. Mr. Beck, correct?

24 A. Yes.

25 Q. And Mr. Zabek, right?

1 A. Yes.

2 Q. Among others, right?

3 A. Um-hum.

4 Q. Yes?

5 A. Yes.

6 Q. Sorry, I didn't hear you.

7 And the -- then at the top of the e-mail, it says:

8 DMCA - We are getting crushed. Right?

9 A. It does.

12:25:48 10 Q. And then it says: Suspension limits being hit early in  
11 the day. The TOC is dropping calls. We had 92 abandoned calls  
12 in one day last week.

13 Right?

14 A. That's correct.

15 Q. And then it says: Annual DMCA complaint volume, and it  
16 has a chart, right?

17 A. It does.

18 Q. And that chart then shows the number of DMCA tickets that  
19 Cox was receiving each year between 2002 and 2009, correct?

12:26:25 20 A. Yes.

21 Q. And it shows that the number of those tickets are  
22 increasing dramatically, right?

23 A. Yes.

24 Q. And, in fact, in 2009, there were 672,000 tickets, right?

25 A. Yes.

1 Q. And frankly, there could have been even more infringement  
2 notices, because sometimes multiple notices get tacked onto a  
3 single ticket, correct?

4 A. There could have been, yes.

5 Q. And then in the next sentence, you say that we are on  
6 track -- and by "we," I assume that means Cox, correct?

7 A. That's correct.

8 Q. So Cox is on track for 1.16 million notices for 2010 based  
9 on the first two weeks' volume. Correct?

12:27:08 10 A. Yes.

11 Q. Then you go on to say: We are trying to take some  
12 steps -- excuse me -- we are taking some steps to try and stem  
13 the flow. Right?

14 A. Yes.

15 Q. And what you lay out after this is what was discussed at  
16 this meeting that you had that day, correct?

17 A. It is.

18 Q. And what you were trying to do was stem the flow of the  
19 number of complaints that Cox was receiving, correct?

12:27:33 20 A. The flow on any given day, yes.

21 Q. I'm sorry, I didn't hear you. Could you say that again?

22 A. The flow on any given day, yes.

23 Q. On any given day?

24 A. Yes.

25 Q. There's no daily volume listed here, is there,

1 Mr. Carothers?

2 A. No, but at the top of the e-mail, it's talking about the  
3 number of suspensions per day and the number of calls per day.  
4 Those are the drivers.

5 Q. It says you're on track for 1.16 million notices and that  
6 you're trying to stem the flow. It's your testimony that you  
7 weren't trying to stem the flow of notices?

8 A. No. That's correct. We were not trying to stem the flow  
9 of notices. We were trying to make sure that we got a  
12:28:14 10 predictable number each day.

11 Q. So your testimony, let me just see if I understand this,  
12 is that stemming the flow just meant you wanted a predictable  
13 number every day? It wasn't actually trying to reduce the  
14 number of notices?

15 A. Exactly. We're trying to smooth out spikes.

16 Q. Where in your e-mail does it say "smooth out spikes"? Can  
17 you point me to that language?

18 A. It doesn't use the word "spike," but if you look at the  
19 top, it talks about the daily suspension limits and the number  
12:28:46 20 of calls being dropped in a given day.

21 Q. Where does it say "smooth out"?

22 A. Oh, I don't know that I use the word "smooth" in there,  
23 but that's what I meant.

24 Q. That's what, that's what you meant?

25 A. Yes.

1 Q. Mr. Zabek was at the same meeting, right?

2 A. Yes.

3 Q. Let's take a look at PX 244, why don't we? And I don't  
4 think it's in evidence yet, so just take a look at it if you  
5 would, please.

6 Mr. Carothers, is PX 244 an e-mail exchange among  
7 folks who were handling abuse issues on behalf of Cox in  
8 January of 2010?

9 A. One moment while I read the e-mail.

12:30:09 10 THE COURT: What number is it?

11 MR. OPPENHEIM: It's 244, Your Honor.

12 MR. ELKIN: Your Honor, I object. Foundation.

13 THE COURT: What was the question?

14 MR. OPPENHEIM: I believe I asked him, Your Honor,  
15 whether or not this was an e-mail amongst people in the abuse  
16 group on January 12, 2010, or something to that effect. It  
17 relates to the exact -- 244. It relates to the exact same  
18 meeting, Your Honor.

19 THE COURT: DX?

12:31:49 20 MR. OPPENHEIM: 244.

21 MR. ELKIN: P as in Plaintiffs.

22 MR. OPPENHEIM: P, P, I'm sorry.

23 THE COURT: All right. Hold on a second, please. I  
24 had DX, which is a business report.

25 Objection is foundation?

1 MR. ELKIN: Yes, Your Honor. There's no indication  
2 that he's reviewed this before.

3 THE COURT: All right. You can -- you may ask him  
4 whether he's familiar with the document and --

5 BY MR. OPPENHEIM:

6 Q. Are you familiar with the document, Mr. Carothers?

7 A. No, I'm not.

8 Q. On this is the e-mail address CCI - Abuse Group, correct?

9 MR. ELKIN: Objection. Foundation.

12:32:55 10 THE COURT: Overruled. I'll keep -- I'll let him ask  
11 about the document.

12 THE WITNESS: It says CCI - Abuse Corporate, yes.

13 BY MR. OPPENHEIM:

14 Q. And you're in that e-mail group, are you not?

15 A. I'm not.

16 Q. Your testimony here is today that you're not within that  
17 e-mail address?

18 A. That's correct.

19 Q. There's also a Data Ops e-mail address. Are you within  
12:33:16 20 that e-mail group?

21 A. I'm not.

22 MR. OPPENHEIM: Okay. Your Honor, we would move to  
23 admit as -- between -- let me ask, between 2012 and 2014, were  
24 you on any of -- either of those e-mail groups?

25 A. I don't think so.

1 Q. But you don't know for a certainty?

2 A. I can't say for sure.

3 MR. OPPENHEIM: Your Honor, we would move its  
4 admission as a business record and an admission. It speaks to  
5 the exact same meeting, somebody else's notes of the meeting.

6 MR. ELKIN: Objection, Your Honor. He hasn't laid  
7 any foundation for any business records exception.

8 THE COURT: Yeah.

9 MR. OPPENHEIM: It's --

12:33:54 10 THE COURT: All right. Objection is sustained. You  
11 may ask him whether he's familiar with any of the information  
12 in the document and whether there were discussions going on.  
13 Ask him.

14 BY MR. OPPENHEIM:

15 Q. Are you familiar with the fact that Mr. Zabek also  
16 reported on what happened at the January 12, 2014 -- excuse me,  
17 2010 meeting?

18 A. I'm not.

19 Q. Would it surprise you if Mr. Zabek described what  
12:34:19 20 happened -- the conversation that you had at that meeting as an  
21 effort to reduce the inbound phone calls?

22 A. No, I guess not.

23 Q. And would it surprise you that Mr. Zabek never said  
24 anything about smoothing out daily spikes?

25 MR. ELKIN: Objection. Speculation.

1                   THE COURT: Overruled.

2                   THE WITNESS: Well, again, we didn't use that  
3 specific language.

4 BY MR. OPPENHEIM:

5 Q. He didn't use any language that it was even remotely close  
6 to speaking about daily spikes, did he?

7 A. Actually, at the very end of this e-mail, he says: We're  
8 going to hold off on limiting the number of complaints that we  
9 can accept per day for now and see how this affects our  
12:35:13 10 suspension counts.

11 Q. In fact, doesn't that support that he -- that the meeting  
12 wasn't about addressing daily issues, if anything?

13 A. No, he says "per day" right there.

14 Q. He says: We're going to hold off on limiting the number  
15 of complaints that we can accept per day for now and see how  
16 that affects our suspension, right?

17 A. Yeah, but he's clearly talking about per day.

18                   THE COURT: All right. Let's move on.

19 BY MR. OPPENHEIM:

12:35:40 20 Q. Let's turn back, Mr. Carothers, to PX 240, and let's look  
21 at what it is that you said Cox was going to do to stem the  
22 flow. So in this e-mail, you describe three things that Cox  
23 was going to do to stem the flow, right?

24 A. Yes, that's correct.

25 Q. And the first thing that Cox was going to do was to allow

1 two self-reactivations in the walled garden before requiring a  
2 call-in, right?

3 A. Yes, that's correct.

4 Q. So that's extending the graduated response by two more  
5 steps, correct?

6 A. By one more step.

7 Q. By one more step?

8 A. Yes.

9 Q. And then the next thing that Cox said it was going to  
12:36:25 10 do -- I'm sorry, and that was soft-walled garden, correct?

11 A. Yes, that's correct.

12 Q. And the soft-walled garden is where a user can just look  
13 on their computer and click on an "okay" and get back on the  
14 internet, correct?

15 A. They can see the list of infringing works and acknowledge  
16 that they've seen it in order to click themselves out, yes.

17 Q. One click, suspension is gone, right?

18 A. That's correct.

19 Q. Okay. The next thing that you say Cox is going to do to  
12:36:53 20 stem the flow is to ignore auto-close the first complaint  
21 against each customer, even if they have a cox.net e-mail  
22 address, right?

23 A. Yes, that's correct.

24 Q. So previously under Cox's policy, if Cox had a cox.net  
25 e-mail address, Cox would forward the notice, right?

1560

1 A. Yeah, that's correct.

2 Q. But now, at this meeting, you decided in order to stem the  
3 flow, you were going to ignore the first notice, right?

4 A. Yes.

5 Q. Okay. And you actually explain in the e-mail that you  
6 only do it for -- you currently only do it for customers  
7 without a cox.net e-mail and so now you're extending it, right?

8 A. Yes.

9 Q. Okay. The third thing that you guys decide to do is to  
12:37:46 10 institute hard limits for all senders, right?

11 A. That's correct.

12 Q. And so you go on to explain that you had only high -- hard  
13 limits on certain senders before this, but now you're going to  
14 have hard limits on everybody, right?

15 A. Yes.

16 Q. And you say that any notice over that limit will be  
17 automatically closed with a response back to the sender, right?

18 A. Yes.

19 Q. And if we look at Cox -- excuse me, CATS, C-A-T-S, data,  
12:38:21 20 when -- under this new policy, if somebody had sent in -- if a  
21 copyright owner or a vendor had sent in too many notices, there  
22 would be a reply to the rights owner that said hard limit for  
23 sender. That's what you see in CATS data, right?

24 A. Yes.

25 Q. And there would be no notification whatsoever of the

1 infringement to the subscriber when that happened, right?

2 A. That's correct.

3 Q. You're familiar with an entity called Digital Rightscorp,  
4 correct?

5 A. I am.

6 Q. Also often referred to in the shorthand as either  
7 Rightscorp or DRC, right?

8 A. Yes.

9 Q. And you know that Rightscorp sent infringement notices to  
12:39:27 10 Cox, correct?

11 A. I do.

12 Q. And they did so on behalf of BMG Music Publishing,  
13 correct?

14 A. Yes.

15 Q. Among others maybe, right?

16 A. BMG is the one I'm familiar with.

17 Q. Let's turn to PX 336, please. I may have the wrong --

18 A. I don't have a 336.

19 Q. Pardon me.

12:40:16 20 THE COURT: Did you say 366?

21 MR. OPPENHEIM: One moment, Your Honor. I -- we may  
22 have the wrong --

23 MR. GOULD: It's already in evidence.

24 MR. OPPENHEIM: It's already in evidence. So  
25 let's -- it's already in evidence. Can we just pull it up,

1 Your Honor?

2 THE COURT: What exhibit number is it?

3 MR. OPPENHEIM: It is 336.

4 THE COURT: PX 3- --

5 MR. OPPENHEIM: Yeah. It's on the screen at the  
6 moment, Your Honor.

7 THE COURT: All right. Thank you.

8 MR. OPPENHEIM: And let's scroll, let's scroll to the  
9 bottom of this e-mail, if we could, Mr. Duval.

10 BY MR. OPPENHEIM:

11 Q. Now, Mr. Carothers, this first e-mail on February 19,  
12 2014, is from you, right?

13 A. It is.

14 Q. And you are e-mailing a bunch of other people within Cox,  
15 asking a question from somebody by the name of Sara; is that  
16 right?

17 A. Yeah, that's correct.

18 Q. And Sara is actually -- was actually Sara Roper,  
19 Ms. Roper, who worked for a different ISP, correct?

12:41:35 20 A. That's correct.

21 Q. And your question is -- to the group was about a complaint  
22 spike from a DMCA monitor called Digital Rightscorp, right?

23 A. Yes, that's correct.

24 THE COURT: Mr. Oppenheim, we don't have this as  
25 being in. Is there any objection to 336?

1 MR. OPPENHEIM: I'm sorry, I thought it was in.

2 MR. ELKIN: We have no objection, Your Honor, subject  
3 to the objection.

4 THE COURT: Correct. It's received. Your exception  
5 is noted.

6 MR. OPPENHEIM: I thought it came in with -- as an  
7 exhibit to Mr. Zabek's deposition because we went through it.  
8 I apologize if it wasn't in.

9 THE COURT: All right. We didn't have it listed, but  
12:42:09 10 there's no objection to it. It's in.

11 MR. ELKIN: I think there were various iterations  
12 that follow this particular e-mail related to this witness, and  
13 I think versions of that were admitted yesterday.

14 THE COURT: Okay. All right. Thank you for that.  
15 Go ahead.

16 BY MR. OPPENHEIM:

17 Q. And following this chain up, Mr. Sikes e-mailed Sara Roper  
18 to ask who the complaint spike was coming from and says: We  
19 are limiting each DMCA complainant by e-mail address to 200 per  
12:42:53 20 day.

21 Do you see that?

22 A. I do.

23 Q. And then David -- Mr. Sikes then asks whether he can get  
24 an answer to the question about who the spike is coming from,  
25 and you get an answer from Mr. Dee, correct? And -- or

1 actually, I'm sorry -- yes, from Mr. Dee, indicating it's  
2 Digital Rightscorp, correct?

3 A. Yes.

4 Q. And Mr. Dee says: Wow, you're limiting each complainant  
5 e-mail address to 200/day? Can we do that, Sara!?!? Can you  
6 imagine what I could do with the freed-up computing and storage  
7 resources!?

8 Right?

9 A. I do see that.

12:43:42 10 Q. And that's a reference to what we often refer to as caps,  
11 right, or hard limits on senders?

12 A. It is.

13 Q. And Mr. Zabek responded to that by saying: F the DMCA!!!  
14 Ya, we told each copyright holder to limit them or give us  
15 money to hire people.

16 Right?

17 A. That's correct.

18 Q. And Mr. Dee responded: Nice! I will defer the political  
19 response to Sara!

12:44:08 20 | Right?

21 A. Um-hum.

22 Q. And then you responded, and you said: IIRC, but you meant  
23 DRC as Digital Rightscorp, right?

24 A. No, that's not correct.

25 Q. What is IIRC?

1 A. It's shorthand for "if I recall correctly."

2 Q. Okay. So you say: If I recall correctly, complainants  
3 get one auto response after they cross the limit and then all  
4 subsequent mail during the next 24-hour rolling window is  
5 silently deleted.

6 Right?

7 A. Yes.

8 Q. You didn't in your response comment on Mr. Zabek's "F the  
9 DMCA," did you?

12:44:45 10 A. Not in that response, no.

11 Q. Not in that response. Your first response basically just  
12 keeps talking. You acknowledge that Mr. Zabek said -- you  
13 don't even knowledge that Mr. Zabek said, "F the DMCA," right?

14 A. That's correct.

15 Q. Then Mr. Sikes responds to you, right?

16 A. Yes.

17 Q. And, and Mr. Sikes says -- basically explains that the cap  
18 doesn't apply to Rightscorp because Rightscorp has been  
19 blacklisted, right?

12:45:24 20 A. Yes.

21 Q. And then he goes on to say: So, yeah, F the DRC!

22 Right?

23 A. Yes.

24 Q. And DRC is Digital Rightscorp, correct?

25 A. That's correct.

1 Q. And you respond to that, right?

2 A. Yes.

3 Q. Can you read your response out loud for the jury, please?

4 A. Sorry to be Paranoid Panda here, but please stop sending  
5 out e-mails that say F the law or F some company. If we get  
6 sued, those e-mails are discoverable and would not look good in  
7 court.

8 Q. Now, you didn't say, guys, we need to respect the  
9 copyright laws, cut it out, did you?

12:46:08 10 A. I didn't say that.

11 Q. And you didn't say, we need to represent artists -- we  
12 need to -- sorry, we need to respect artists, did we?

13 A. No, I didn't say that either.

14 Q. And you didn't say, gentlemen, you need to change the way  
15 you conduct yourself because this is not in Cox's values, did  
16 you?

17 A. No, I didn't say that.

18 Q. Your concern was how their e-mails would look in court,  
19 right?

12:46:35 20 A. Yeah. All the context is lost.

21 Q. And, and your concern of how they would look in court was  
22 well-founded because you expected that you might well be in  
23 court over these issues, correct?

24 A. No, that's not correct.

25 MR. OPPENHEIM: No further questions at this time,

1 Your Honor.

2 THE COURT: All right. Mr. Elkin?

3 MR. ELKIN: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. ELKIN:

6 Q. Good afternoon, Mr. Carothers.

7 A. Good afternoon.

8 Q. Before I get into some background questions, let me just  
9 pick up where Mr. Oppenheim stopped. I think you made a  
12:47:22 10 response to his question about the, you know, the Paranoid  
11 Panda e-mail, that all the context is lost. What did you mean  
12 by that?

13 A. So there's a lot of context that's lost when you send an  
14 e-mail. The emotional context is lost. The situational  
15 context is lost. Sitting here reading that e-mail, I know it  
16 was about one specific company, Digital Rightscorp, that was  
17 extremely frustrating to us because of the way they were  
18 attacking our customers.

19 I know the character of Jason and Joe. I hired both  
12:47:57 20 of them. I wouldn't have hired them if they weren't good  
21 people. I wouldn't have recommended Jason to be the manager of  
22 the group after me if I didn't think he cared about our  
23 customers.

24 And just reading a sentence out in front of a court  
25 from an e-mail loses all of the emotional context that the

1 person was thinking of when they were writing that e-mail.

2 For example, when Jason says, "F the DMCA," he has  
3 three exclamation points after that and a big smiley face at  
4 the end of the sentence. He was clearly joking, but that  
5 doesn't come out when counsel is just reading the sentence out.

6 Q. Thank you for that.

7 I'm going to take you from the beginning, if I can,  
8 so I'm not going to ask you to come back in our case. By who  
9 are you employed?

12:48:40 10 A. Cox Communications.

11 Q. And what's your current job title?

12 A. I am Cox's senior principal security architect.

13 Q. And what are your responsibilities as senior principal  
14 security architect?

15 A. I do forward-looking security research. I act as a  
16 consultant and escalation point to other security teams, and I  
17 work with other organizations, both public and private,  
18 throughout the world.

19 Q. And what -- tell the jury what types of security issues  
12:49:06 20 Cox confronts.

21 A. All kinds. Denial of service attacks, hacking, spamming,  
22 threats and harassment, copyright allegations, obviously.

23 Q. And are you aware of security issues more broadly in Cox's  
24 industry?

25 A. I am.

1 Q. How so?

2 A. I work continuously with not only other ISPs but  
3 government organizations. We are part of U.S. critical  
4 infrastructure, so I work with the Department of Homeland  
5 Security. I work with the FBI on criminal investigations, and  
6 I routinely cooperate with other security researches, vendors,  
7 and the other ISPs both here in the U.S. and abroad.

8 Q. Give us some examples of the ISPs that you actually work  
9 with.

12:49:50 10 A. So both the wireless ones and the wireline ones, so AT&T,  
11 Sprint, T-Mobile, Verizon, Comcast, Spectrum; outside the U.S.,  
12 companies like TELUS or Bell Canada, British Telecom.

13 Q. And what does Cox do as a member of these groups?

14 A. We exchange best practices. We exchange specific threat  
15 intelligence about attacks that are going on. We share what  
16 we're doing and what we think the best way to do it is.

17 Q. And how long have you participated in these industry  
18 security groups?

19 A. For as long as I've been with Cox.

12:50:28 20 Q. And how long has that been?

21 A. Eighteen-and-a-half years.

22 Q. When did you start with Cox?

23 A. April of 2001.

24 Q. And to what extent is your participation in these industry  
25 groups part of your job at Cox?

1 A. It's a core part of my job.

2 Q. So before you started at Cox in 2001, what did you do  
3 before that?

4 A. I was studying computer science at the University of  
5 Oklahoma.

6 Q. Is this is your first job out of college?

7 A. Yes.

8 Q. And what's your complete upper educational background?

9 A. So I also have a Bachelor's Degree in IT Cybersecurity  
12:51:08 10 from Western Governors University, and I have a stack of  
11 certifications.

12 Q. So what was your first job at Cox in 2001?

13 A. I was a network engineer.

14 Q. And what did you do as a network engineer?

15 A. Well, I worked on a lot of tasks like automation and  
16 programming, and I also founded Cox's first abuse department.

17 Q. Okay. I'm going to come back to that in a moment. Just  
18 take the jury through, very briefly so we can get this out of  
19 the way, the different positions you've had at Cox since the  
12:51:37 20 time that you joined in 2001 and your corresponding duties and  
21 responsibilities.

22 A. Sure. Started out as a network engineer. I was promoted  
23 to manager, and I was the manager of the abuse department.  
24 Then we had a reorganization that split the engineering  
25 functions off from the operations functions. The abuse team

1       went off to the operations side of the house, and that's when  
2       Mr. Zabek took over as the leader.

3               I moved over to the engineering side of the house as  
4       a security engineer. From there, I was promoted to principal  
5       security architect and then eventually senior principal  
6       security architect.

7       Q.    Okay. Have you ever heard of the term "Acceptable Use  
8       Policy," or "AUP"?

9       A.    Yes.

12:52:19 10      Q.    What is that?

11     A.    Acceptable Use Policy is the document that lays out what  
12       our customers are and are not allowed to do with the service.

13     Q.    And have you heard of the term abuse, a-b-u-s-e, in the  
14       context of your security work?

15     A.    I have.

16     Q.    What is abuse?

17     A.    Abuse is an industry term for the group within a company  
18       that deals with AUP violations.

19     Q.    Are you familiar with the sorts of activities that  
12:52:43 20       violates Cox's AUP?

21     A.    I am.

22     Q.    Could you tell the jury some examples?

23     A.    Sure. Any kind of cyber attack, denial of service  
24       attacks, hacking, spamming, threatening people, anything that  
25       breaks the law, including copyright violations.

1 Q. Is there a group at Cox that enforces the AUP?

2 A. There is.

3 Q. Who is that?

4 A. That's the customer safety team.

5 Q. And did the customer safety team originally go by a  
6 different name?

7 A. Yes. The industry term is the abuse team.

8 Q. Why did they change its name from abuse to safety?

12:53:20 9 A. The mission of the team changed drastically over the  
10 years. When it was initially founded, it was dealing with  
11 customers who were doing things on purpose, and over the years,  
12 the landscape of cyber threats has changed, and most of the  
13 people who violate the AUP these days are victims of malware.  
14 So they're actually victims rather than perpetrators, and so  
15 that's why we changed the name to customer safety.

16 Q. Okay. Were you ever a member of the abuse team or safety  
17 team?

18 A. Yes.

19 Q. Do you know who founded that department?

12:53:47 20 A. I did.

21 Q. Now, have you heard of the term "tiers," t-i-e-r-s, used  
22 in relationship to customer safety?

23 A. I have.

24 Q. What does that mean?

25 A. So our customer safety organization is organized sort of

1 like a wedding cake. At the bottom tier, it's the largest  
2 group, that's Tier 1. Tier 1 is the first line that a Cox  
3 customer would reach when they call in for customer support.

4 Above that is a somewhat smaller tier, which is  
5 Tier 2. Tier 2 is a smaller group of people who are more  
6 highly trained, more technically advanced.

7 Above that is another even smaller group called Tier  
8 2.5, also known as the TOC, the Technical Operations Center,  
9 and then above that is the customer safety team itself.

12:54:42 10 Q. Okay. And is there a dedicated team to deal with abuse  
11 complaints for Cox Business customers?

12 A. There is.

13 Q. What's that called?

14 A. It's called the National Support Center, or NSC.

15 Q. Okay. Which of those organizations or structures that you  
16 just identified have responsibility for dealing with customer  
17 copyright complaints?

18 A. So Tier 2, Tier 2.5, and the customer safety team, as well  
19 as the NSC.

12:55:07 20 Q. Okay. Are you aware of the makeup by numbers of the  
21 Technical Operations Center in 2011?

22 A. Yes.

23 Q. Can you talk about the, the numbers of folks who were in  
24 that group?

25 A. Yes. So originally there were nine people in the

1 Technical Operations Center, and they had mixed duties. They  
2 would accept escalations from Tier 2 for any kind of issue. It  
3 could be an abuse issue, or it could be, you know, a customer's  
4 WiFi is not working, that kind of stuff. And additionally,  
5 they would be in the Cox abuse tracking system, working on  
6 those tickets.

Sometime around that time, we reorganized a bit. We shifted five of those people from the TOC down into Tier 2, leaving four people in the TOC and 85 in Tier 2. At that time, the TOC's duties were also reduced to just handling the abuse tickets.

12 Q. Okay. And with respect to Tier 2, is that -- do the folks  
13 in that group handle among other things copyright infringement  
14 complaints?

15 A. They do.

16 Q. Now, does the customer safety group at Cox still enforce  
17 Cox's AUP?

18 A. It does.

19 Q. Has the nature of the threats that Cox handles changed  
20 over time?

21 A. It has.

22 Q. Could you tell us how that has occurred?

23 A. In the early days, when we would see a customer, for  
24 example, sending out spam e-mails, it was because they were  
25 doing it on purpose. They were trying to send out e-mails for

1 their own business or something along those lines.

2                   But cyber criminals have gotten more and more  
3 advanced, and these days what they do is infect innocent  
4 people's PCs with malware. Then they use the malware to launch  
5 network attacks or send spam, things of that nature.

6                   So over time, the abuse department's mission changed  
7 from tracking down people who were doing something on purpose  
8 to protecting our customers, who were actually victims of  
9 attacks.

12:57:05 10 Q.       What are the areas of focus of the customer safety group?

11 A.       There are three. The first one is protecting Cox's  
12 network from its own subscribers, the second is protecting our  
13 subscribers from the internet, and the third is protecting the  
14 internet from our subscribers.

15 Q.       Can you give the jury some examples of each of those three  
16 areas of focus?

17 A.       Sure. So protecting Cox's network from its subscribers,  
18 if a subscriber is infected with malware, launching some kind  
19 of network attack, it could be impacting our network. It could  
12:57:37 20 be slowing down the service of people around them, things of  
21 that nature.

22                   Protecting our customers from the internet, of  
23 course, is a huge piece of the puzzle. Our customers are under  
24 constant attack from things like phishing e-mail and malware,  
25 and we want to protect them as much as we can.

1                   And then protecting the internet from our customers,  
2 we think of that the same way we think of the environment. In  
3 the same way that we wouldn't want to dump toxic chemicals into  
4 a river, we don't want to dump toxic packets out onto the  
5 internet. So a good example of that, of course, is copyright  
6 infringement allegations.

7 Q.    Okay. And how would the customer safety group --  
8 withdrawn.

9                   To what extent does the role of education factor into  
12:58:24 10 the work of the safety group?

11 A.    It's practically the entire mission of the safety group.

12 Q.    How does Cox become aware of violations of the AUP?

13 A.    We have a mailbox. Every ISP has a mailbox called abuse@  
14 whatever the domain is. Ours is abuse@cox.net. And when  
15 people around the world notice our customers doing something  
16 wrong, say, they receive a spam e-mail from the customer, they  
17 send an e-mail to abuse@cox.net to let us know what's going on.

18 Q.    And have you had occasion during the course of your work  
19 in the safety area to actually speak to customers about AUP  
12:59:08 20 violations?

21 A.    Many times, yes.

22 Q.    Have you formed a general view as to the level of  
23 sophistication of customer -- customers' violations of AUP?

24 A.    I have.

25 Q.    What is that?

1 A. Most people are not very technically savvy. They're not  
2 aware of what the AUP even is, much less how they violated it.

3 Q. Can you discuss any instances where customers won't  
4 understand the issues?

5 A. Oh, absolutely. Specifically for copyright allegations,  
6 we often find that the accountholder is a parent, they have  
7 teenagers in the house, and the teenagers are much more  
8 technically savvy than the parents. So the parents don't  
9 really even understand what's going on, much less how to put a  
10 stop to it.

11 We also have quite a --

12 MR. OPPENHEIM: Objection. No foundation. I move to  
13 strike, Your Honor. He can't testify as to what a particular  
14 customer was thinking of doing.

15 THE COURT: Sustained. And let's break now for our  
16 lunch. It's 1:00. We'll come back at 2:00 and continue  
17 hearing from Mr. Carothers.

18 All right. You're excused. Thank you.

19 NOTE: At this point, the jury leaves the courtroom;  
20 whereupon the case continues as follows:

21 JURY OUT

22 THE COURT: All right. Mr. Carothers, you're in the  
23 middle of your testimony, so don't discuss what you've  
24 testified so far with anybody, and we'll see you at 2:00, sir.  
25 Okay?

1 THE WITNESS: Yes, sir.

2 THE COURT: All right. You're excused. Thank you.

3 THE WITNESS: Thank you.

4 WITNESS STOOD DOWN

5 THE COURT: Did you have an issue with another  
6 witness you identified earlier this morning?

7 MR. OPPENHEIM: Yes, Your Honor.

8 THE COURT: Yes, sir. Go ahead.

9 MR. OPPENHEIM: We've been informed that the  
01:01:15 10 defendants intend to call Mr. Monson, who worked for Harbor  
11 Labs, and as you'll recall, Your Honor, Harbor Labs issued a  
12 report --

13 THE COURT: Yeah.

14 MR. OPPENHEIM: -- regarding CAS, C-A-S.

15 Mr. Monson lives in, as I understand, and works in  
16 Baltimore or just outside Baltimore. He's within the reach of  
17 the subpoena power.

18 We -- when the defendants noticed their witnesses and  
19 indicated that they might take him either live or by  
01:01:51 20 deposition, we objected to a video deposition being used. This  
21 objection was lodged in July, when we first got their witness  
22 list. We understand they now want to show his video in lieu of  
23 bringing him live, which is improper under the rules. You're  
24 not permitted to use a deposition testimony in lieu of live  
25 testimony if a witness is within the subpoena power of the

1 Court.

2 THE COURT: Okay.

3 MR. OPPENHEIM: So, you know, frankly, they've had  
4 five months to deal with this since we objected, so we're  
5 surprised to hear now that they are intending to use the video  
6 and think it's improper, Your Honor.

7 THE COURT: Okay.

8 MR. OPPENHEIM: I also think, by the way, the jury  
9 has heard more than they could possibly want to hear about CAS  
01:02:41 10 at this point, and in that respect, it's also probably cumulous  
11 of --

12 THE COURT: Thank you.

13 MR. ELKIN: I won't comment on the second part of it,  
14 which we disagree with, of course. But he'll come live. It's  
15 not a big deal, Your Honor. The -- this was a courtesy to the  
16 witness who was deposed, who didn't want to be here. We  
17 thought given the fact that he's going to testify for 15 or 20  
18 minutes, but it's fine. We'll make him available.

19 THE COURT: All right. Let's bring him.

01:03:08 20 All right. Anything else before we recess?

21 NO RESPONSE

22 THE COURT: Okay. All right. We're in recess until  
23 2:00.

24 NOTE: At this point, the December 10, 2019, morning  
25 portion of the case is concluded.

1

CERTIFICATE OF COURT REPORTERS

2

3

4

We certify that the foregoing is a true and  
accurate transcription of our stenographic notes.

5

6

7

/s/ Norman B. Linnell  
Norman B. Linnell, RPR, CM, VCE, FCRR

8

9

10

/s/ Anneliese J. Thomson  
Anneliese J. Thomson, RDR, CRR

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25